

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**THOMAS LAMBERSON AND
JUDITH LAMBERSON**

V.

**PHILHAVEN HOSPITAL, DR. NHUEN
D. NGUYEN, JANET L. DONATO,
ACSW, LSW, DR. LEO SELL, THE
DEERWOOD CENTER, JASON LEWIS
AND PREFERRED BEHAVIORAL
HEALTH OF NEW JERSEY**

CIVIL ACTION

CASE NO. 00-276 (AET)

JURY TRIAL DEMANDED

**DEFENDANTS', JASON LEWIS, ACSW, LSW AND THE DEERWOOD CENTER,
EXHIBITS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

- A. Plaintiff's Amended Complaint, U.S.D.C., D.N.J., No. 00-276 (AET).
- B. Deposition of Plaintiff, J.Lamberson, Part. I, September 13, 2001
- C. Deposition of Plaintiff, J.Lamberson, Part II, September 14, 2001
- D. Deposition of Plaintiff, J.Lamberson, Part III, November 30, 2001
- E. Deposition of Plaintiff, T.Lamberson, Part I, September 14, 2001
- F. Deposition of Plaintiff, T.Lamberson, Part II, November 30, 2001
- G. Deposition of Patricia Benzenhafer, December 10, 2001
- H. Deposition of Janet Donato, September 28, 2001
- I. (omitted)
- J. (omitted)
- K. Deposition of Jason Lewis, ACSW, LSW, January 8, 2002
- L. Verification of Jason Lewis, ACSW, LSW.
- M. Transcript of audio tape of therapy session of J.Lamberson, February 28, 1994.
- N. Treatment session notes by Jason Lewis, February 21, 1994 through June 27, 1994.
- O. Report of Herbert Spiegel, M.D., February 26, 2002.

- P. Report of David L. Fink, M.D., February 22, 2002.
- Q. Report of David L. Fink, M.D., November 15, 2002.

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**MOTION FOR SUMMARY JUDGMENT OF DEFENDANT,
JASON LEWIS, ACSW, LSW**

Moving defendants, Jason Lewis, ACSW, LSW and The Deerwood Center (collectively "Lewis"), by and through their attorneys, Gold, Butkovitz & Robins, P.C., hereby moves before this Honorable Court, pursuant to Federal Rule of Civil Procedure 56, for the entry of Summary Judgment in their favor, and against the Plaintiffs, Judith Lamberson ("J.Lamberson") and Thomas Lamberson ("T.Lamberson"). In support of their Motion for Summary Judgment, Moving defendant, Lewis, relies upon and incorporates by reference, the accompanying Memorandum of Law in Support of Motion for Summary Judgment, and the Statement of Undisputed Facts in Support of Motion for Summary Judgment, both of which are being served and filed contemporaneous with this Motion.

WHEREFORE, Moving Defendants, Jason Lewis, ASCW, LSW and The Deerwood Center, respectfully request that this Honorable Court grant their Motion for Summary Judgment, and enter the accompanying Order dismissing with prejudice the claims of the Plaintiffs.

Respectfully submitted,

GOLD, BUTKOVITZ & ROBINS, P.C.

BY:

ALAN S. GOLD
SEAN ROBINS
Attorneys for defendants,
Jason Lewis, ASCW, LSW and
The Deerwood Center

7837 Old York Road
Elkins Park, PA 19027
(215) 635-2000

DATE: _____

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ORDER

This matter having come before the Court upon the Motion of defendants, Jason Lewis, ASCW, LSW and The Deerwood Center, for an Order pursuant to Federal Rule of Civil Procedure 56, granting summary judgment in their favor, and against the Plaintiffs, Judith Lamberson and Thomas Lamberson; and this Court having considered the submissions in support of the motion; and having considered the submissions in opposition thereto; and for good cause shown;

IT IS THIS _____ day of _____, 2002, hereby ORDERED, that the Summary Judgment Motion of defendants, Lewis and Deerwood

Center, is GRANTED, and the Complaint of the Plaintiffs as against them is
DISMISSED WITH PREJUDICE.

BY THE COURT:

J.

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CIVIL ACTION

CASE NO. 00-276 (AET)

JURY TRIAL DEMANDED

NOTICE OF MOTION

**TO: Gary D. Ginsberg, Esquire
Atrium II, Suite 330
3000 Atrium Way
Mt. Laurel, New Jersey**

PLEASE TAKE NOTICE, that on February 3, 2003, at 9:00 a.m., or as soon thereafter as the Court will order, Moving Defendants, Jason Lewis, ASCW, LSW and The Deerwood Center, by and through their attorneys, Gold, Butkovitz & Robins, P.C., will move before this Honorable Court for an Order pursuant to Federal Rule of Civil Procedure 56, granting Summary Judgment in their favor, and against the Plaintiffs, and dismissing Plaintiffs' Complaint with prejudice. Your response to this Motion is due within the time period set by the Court in its Order, this Court having previously ordered

that the provisions of Appendix N of the Local Rules of the United States District Court for the District of New Jersey, shall not be applicable in this matter.

GOLD, BUTKOVITZ & ROBINS, P.C.

BY:

ALAN S. GOLD
SEAN ROBINS
Attorneys for defendants,
Jason Lewis, ASCW, LSW and
The Deerwood Center

7837 Old York Road
Elkins Park, PA 19027
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DATE: _____

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HEALTH OF NEW JERSEY**

CIVIL ACTION

CASE NO. 00-276 (AET)

JURY TRIAL DEMANDED

**BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS,
JASON LEWIS, ACSW, LSW AND THE DEERWOOD CENTER**

I. INTRODUCTION

Plaintiffs, Thomas Lamberson (“T.Lamberson”) and Judith Lamberson (“J.Lamberson”) (also collectively referred to herein as “the Lambersons”), originally filed a Complaint in the United States District Court for the Eastern District of Pennsylvania, in Lamberson v. Philhaven Hospital, et al., Civil Action No. 99-cv-1217, and thereafter filed an Amended Complaint, naming therein as defendants, Philhaven Hospital, Dr. Nhien D. Nguyen, Janet L. Donato, ACSW, LSW, Dr. Leo Sell, moving defendants, Jason Lewis, ACSW, LSW and The Deerwood Center (collectively “Lewis”)¹, and Preferred Behavioral Health of New Jersey.

Following Motions to Dismiss filed by several of the defendants in the Eastern District action, by Order dated November 19, 1999, the Honorable Eduardo C.

¹ Although the Plaintiffs have named in their Amended Complaint an “entity” by the name of “The Deerwood Center,” no such legal entity exists. “The Deerwood Center” was solely the name of the building within which Lewis and other therapists practiced during the time period at issue in this matter, and never constituted any form of legal entity.

Robreno, dismissed without prejudice, the Plaintiffs' Amended Complaint for lack of personal jurisdiction, as to defendants, Jason Lewis, The Deerwood Center, and Preferred Behavioral Health of New Jersey. In the same Order, Judge Robreno also transferred the matter to the United States District Court for the Middle District of Pennsylvania, where it is was captioned Lamberson v. Philhaven Hospital, et al., Civil Action No. 00-cv-37. Its present status is unknown to moving defendants.

Following the aforementioned dismissal without prejudice, the Plaintiffs initiated the instant action as against defendants, Lewis, The Deerwood Center and Preferred Behavioral Health of New Jersey in this Court.

Subsequently, moving defendants Lewis and Deerwood, sought and were granted leave to file a third-party joinder complaint, and joined in this matter as defendants, Philhaven Hospital, Dr. Nhien D. Nguyen, and Janet L. Donato, ACSW, LSW. Discovery of this matter proceeded and has been completed as to all parties. Copies of the relevant portions of the following deposition transcripts are attached hereto: Depositions of Plaintiff, J.Lamberson, Part. I, September 13, 2001 (as Ex. "B"); Part II, September 14, 2001 (as Ex. "C"); Part III, November 30, 2001 (as Ex. "D"); Deposition of Plaintiff, T.Lamberson, Part I, September 14, 2001 (as Ex. "E"); Part II, November 30, 2001 (as Ex. "F"); Deposition of Patricia Benzenhafer, December 10, 2001 (as Ex. "G"); Deposition of Janet Donato, September 28, 2001 (as Ex. "H"); Nhien Nguyen, M.D., September 5, 2001 (as Ex. "I"); Helen Ratico, December 13, 2001 (as Ex. "J"); and Jason Lewis, January 8, 2002 (as Ex. "K").

Moving defendant, Jason Lewis, herein seeks the entry of summary judgment in his favor and against the Plaintiffs, on the bases discussed in detail in Part III, below. Lewis also incorporates by reference his accompanying Statement of Undisputed Facts in Support of Motion for Summary Judgment, as if set forth fully herein at length, in support of his Motion for Summary Judgment. (This statement is referred to and relied

upon throughout this brief, and is incorporated by reference as if set forth fully herein at length. This Statement of Undisputed Facts is referred to herein as “SOF”)

Plaintiffs, in their Amended Complaint (a copy of which is attached hereto as Ex. “A”), allege that on February 5, 1993, Plaintiff J.Lamberson admitted herself to Defendant, Philhaven Hospital (“Philhaven”) for treatment of depression, and there was treated by Defendants Nhien D. Nguyen, M.D. (“Nguyen”) and Janet L. Donato, ACSW, LSW (“Donato”). (Ex. “A”, at ¶11) Plaintiffs allege that during her February, 1993 hospitalization at Philhaven, J.Lamberson was provided drug and hypnosis therapy (Ex. “A”, at ¶12)

During this first of two hospitalizations at Philhaven, allege Plaintiffs, J.Lamberson was informed that she had Multiple Personality Disorder (“MPD”), which she had developed “in order to survive her childhood trauma,” which she was informed included instances of sexual abuse by her father and an uncle, and having witnessed “satanic or occult rituals.” (Ex. “A”, at ¶¶13-19) The Plaintiffs allege that J.Lamberson “was vulnerable, depressed and on sufficient amounts of drugs that she did not even this into question” the diagnosis of MPD. (Ex. “A”, at ¶19) Plaintiffs further allege that J.Lamberson “was instilled with false memories of incidents of sexual abuse by her father and grandfather” (Ex. “A”, at ¶24)

J.Lamberson alleges that she was next re-admitted to Philhaven in May, 1993, “after an episode when she was riding in the car with her husband,” in which she “made him stop the care and proceeded to run down the street.” (Ex. “A”, at ¶29) Plaintiffs allege that J.Lamberson was again “subjected to drug treatment and hypnosis therapy in which Donato and other treating personnel continued to focus on her memories of childhood sexual abuse, which had apparently been implanted during her first admission.” (Ex. “A”, ¶31) Following her second discharge from Philhaven, Plaintiffs allege, J. Lamberson returned to treatment with Dr. Leo Sell and Pat Benzenhafer. (Ex.

“A”, at ¶33)

In February, 1994, allege Plaintiffs, J.Lamberson cut her wrists with a kitchen knife, was taken to Kimball Medical Center, and then referred to Shoreline Behavioral Health Center, and admitted there on February 11, 1994. (Ex. “A”, at ¶34-35)

J.Lamberson was briefly treated at Shoreline, and discharged on February 18, 1994, at which time she was referred to the Deerwood Center. (Ex. “A”, at ¶36-37)

According to the Plaintiffs, between February 21, 1994 and June 16, 1994, J.Lamberson had a total of twenty-three (23) treatment sessions at Deerwood with moving defendant, Lewis. (Ex. “A”, at ¶38) After discontinuing treatment with Deerwood and Lewis in June, 1994, allege Plaintiffs, she started treating, on December 2, 1994 with defendant, Preferred Behavioral, where she received treatment, once a month, through December 13, 1996. (Ex. “A”, at ¶¶43-44) At Philhaven, she was diagnosed with MPD and post-traumatic stress disorder. (Ex. “A”, at ¶45)

The Plaintiffs allege in their Complaint that they moved to North Carolina in January, 1997, but due to financial problems, J.Lamberson did not resume therapy. (Ex. “A”, at ¶46-47)

Specifically, with respect to moving defendant, Jason Lewis, the only allegations made by the Plaintiffs are as follows:

38. From February 21, 1994 through June 16, 1994, wife-plaintiff had to total of 23 treatment sessions at defendant Deerwood, where she was treated by defendant, Lewis.
39. Using hypnotism and regression therapy, defendant Lewis reinforced plaintiff’s belief in the memories implanted by Philhaven Hospital and reinforced her belief in her other personalities.
40. Defendant, Lewis’ goal was to help plaintiff’s other personalities “communicate” with each other.
41. Plaintiff stopped treating with defendants Deerwood and Lewis on September 24, 1994, because she could no longer afford to.

Ex. "A", at ¶¶38-41. Plaintiffs have failed, as a matter of law, to produce any evidence which would support her factual claims as against moving defendant, Lewis. As will be discussed herein, Plaintiffs have failed to prove by a preponderance of the evidence (and failed to produce any evidence whatsoever) that Lewis used either hypnotism or regression therapy in treating J.Lamberson. The Plaintiffs have failed to prove that Lewis acted in any way to reinforce J.Lamberson's belief in memories allegedly implanted at Philhaven Hospital. Plaintiffs have likewise failed to prove that any memories were implanted in J.Lamberson by Philhaven Hospital, Lewis or any other defendant. The Plaintiffs have failed to prove that Lewis acted in any way to reinforce J.Lamberson's belief in the existence of "her other personalities." The Plaintiffs have failed to prove that any of the actions taken by Lewis is the treatment of J.Lamberson fell below the applicable standard of care for a therapist treating a patient such as J.Lamberson who presented with symptoms and complaints with which J.Lamberson presented.

The Plaintiffs' claims as against moving defendants, Jason Lewis and The Deerwood Center, should therefore be dismissed with prejudice.

II. STANDARD ON SUMMARY JUDGMENT

In 1986 the Supreme Court of the United States radically changed the standard for summary judgment and in effect issued a directive to district courts to be more assertive in using this procedural tool to eliminate cases prior to trial. As the Supreme Court indicated in Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574 (1986) once the party seeking summary judgment has pointed out to the court the absence of a fact issue:

...its opponent must do more than simply show that there is a metaphysical doubt as to the material facts...In the language of the Rule, the non-moving party must come forward with 'specific facts' showing that there is a genuine

issue for trial'...where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial'. 475 U.S. at 586-87.

Summary judgment must be granted unless the evidence construed in favor of the non-moving party is sufficient for a reasonable jury to return a verdict for that party. Anderson v. Liberty Lobby, Inc., 477 U.S. 243, 249-50 (1986). Granting summary judgment is appropriate against "a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 106 S. Ct. at 2553.

The United States Court of Appeals for the Third Circuit in Williams v. Borough of West Chester, Pa., 891 F.2d 458 (3d Cir. 1989) recognized this drastic change in the standard for summary judgment when it stated:

Since the Supreme Court decided its summary judgment trilogy, appellate courts have increasingly been called upon to engage in difficult line-drawing exercises to determine whether a non-moving party has adduced sufficient evidence to defeat a motion for summary judgment.

Id. at 459.

The United States Court of Appeals for the Third Circuit held that although the case was extremely close it had to conclude that no reasonable jury could so find. The court indicated that circumstantial evidence could not support the plaintiff's case concerning a constitutional violation. The court concluded:

Although the line we draw today is, as I have said, not easy to place, the line must be drawn somewhere, and somewhere that adequately protects the salutary policies underlying Rule 56. Of course the right to present one's claims to a jury provides competing, no less important policies to be considered, but the upshot of the Supreme Court's summary judgment trilogy is the former must not be sacrificed entirely to the latter. The old scintilla rule, although it would make cases like this one far easier to decide, did just that. I concede, as I must, that plaintiffs have adduced some circumstantial evidence tending to show deliberate indifference. However, because the line we must draw depends entirely on context and differences in degree, 'some evidence is not necessarily enough to survive

summary judgment.

Id. at 891 F.2d at 466 (Emphasis added).

For the reasons discussed herein, the Plaintiffs had failed to meet this burden. The Plaintiffs have failed to submit sufficient evidence to support a jury verdict as to each of the elements of their claims against Moving defendant, Lewis, and therefore, this Motion for Summary Judgment should be granted, and the Plaintiffs' claims against Lewis dismissed with prejudice.

III. LAW AND DISCUSSION

A. Plaintiff's have failed to prove through competent expert testimony that moving defendants, Lewis and Deerwood, violated the applicable standard of care, or that any violation of the standard of care caused any injury to Plaintiff, Judith Lamberson, and the Plaintiffs' claims must therefore be dismissed.

1. Standard for admissibility of expert testimony.

The admissibility of expert testimony in the federal courts is governed by Federal Rule of Evidence 702, which provides that:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Fed.R.Evid. 702.

An expert's testimony must also be "sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute." Daubert, 509 U.S. at 591, quoting United States v. Downing, 753 F.2d 1224, 1242 (3d Cir. 1985).

The court, in considering whether to admit an expert's testimony, must first make a "preliminary assessment of whether the reasoning or methodology underlying the

testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.” Daubert, 509 U.S. at 592-593. The expert’s proposed testimony must be based upon science which has been validated, and “based on what is known”:

[T]o qualify as ‘scientific knowledge,’ an inference or assertion must be derived by the scientific method. Proposed testimony must be supported by appropriate validation—i.e., ‘good grounds,’ based on what is known. In short, the requirement that an expert’s testimony pertain to ‘scientific knowledge’ established a standard of evidentiary reliability.

Daubert, 509 U.S. at 590; Magistrini v. One Hour Martinizing Dry Cleaning, 180 F.Supp.2d 584, 593 (D.N.J. 2002).

Another “key question” in determining whether an expert’s testimony is permissible when based in a particular theory or technique, is “whether it [the theory] can be (and has been) tested.” Daubert, 509 U.S. at 593. “The statements constituting a scientific explanation must be capable of empirical test.” Id. at 593, quoting C. Hempel, *Philosophy of Natural Science* 49 (1966). Further “[a]nother pertinent consideration is whether the theory or technique has been subjected to peer review and publication.” Daubert, 509 U.S. at 593. Fully, the court should employ a variety of factors in determining whether the proffered opinion and the science behind the opinion are reliable:

(1) whether the theory or technique can be tested, (2) whether the theory or technique has been subjected to peer review, (3) whether there is a high rate of known or potential error, (4) whether there are standards controlling the technique’s operation, (5) whether the theory enjoys “general acceptance,” (6) whether there is a sufficient relationship between the technique and methods which have been established to be reliable, (7) whether the expert witness’ qualifications are sufficient, and (8) whether the method has been put to non-judicial uses.

Daubert, 509 U.S. at 593-594; In re Paoli R.R. Yard PCB Litigation, 35 F.3d 717, 742 n.8 (3d Cir. 1994).

2. Requirement that plaintiff present expert testimony within a reasonable degree of medical certainty as to the applicable standard of care, and whether defendant's treatment breached that standard of care.

In a medical malpractice action, a practitioner's duty is measured in terms of an objective standard of care. In all but the rarest of circumstances, expert testimony is required to establish that standard of care and the practitioner's deviation from that standard of care. Morlino v. Medical Center of Ocean County, 152 N.J. 563, 578, 706 A.2d 721, 729 (1998); Rosenberg ex rel. Rosenberg v. Cahill, 99 N.J. 318, 325, 492 A.2d 371 (1985); Schueler v. Strelinger, 43 N.J. 330, 345, 204 A.2d 577 (1964). Expert testimony is required because "a jury of laymen cannot be allowed to speculate as to whether the procedure followed by a treating physician conformed to the required professional standards." Schueler, 43 N.J. at 345.

3. Plaintiffs' sole expert, Herbert Spiegel, M.D., fails to provide an expert medical opinion, within a reasonable medical certainty, that Lewis' treatment of J.Lamberson fell below the applicable standard of care.

Plaintiffs' sole expert, Herbert Spiegel, M.D., at no time, discusses, critiques or even refers to the treatment provided by Lewis.² Spiegel fails to articulate what the applicable standard of care is for a therapist in Lewis' position, treating a patient who presents with the symptoms and complaints with which J.Lamberson presented to Lewis. Spiegel fails to provide any opinion whatsoever, within a reasonable medical certainty, as to the treatment provided by Lewis, as to the methods utilized by Lewis in his sessions with J.Lamberson, or as to the diagnostic process employed by Lewis in

² At the time of this writing, the first part of Dr. Herbert Spiegel's deposition had been taken, and the transcript had not yet been received. Moving defendants will supplement this memorandum of law with specific references to Dr. Spiegel's deposition transcript after its receipt, but for now, his deposition testimony will be generally referred to and discussed in this memorandum. A second date for the completion of Dr. Spiegel's expert deposition has yet to be scheduled as of this writing.

his diagnosis of J.Lamberson. Spiegel at no time makes any criticism of the treatment rendered by Lewis, nor even provides any indication in his evaluation that he either reviewed Lewis' treatment notes or his deposition testimony. Likewise, Spiegel fails at any time to opine that any of the treatment rendered by Lewis caused any injury to J.Lamberson. In sum, Spiegel fails to render an opinion as to the treatment rendered by Lewis, the standard of care applicable to Lewis, or any opinion whatsoever that deals with the undisputed facts surrounding J.Lamberson's treatment with Lewis. How then is it possible for Spiegel to have provided an opinion, within a reasonable degree of medical certainty, that the treatment rendered by Lewis to J.Lamberson fell below the standard of care. It is simple: He cannot. And, in fact, he has not.

A review of Spiegel's report (Ex. "O") demonstrates that he has failed to render any opinion as to the treatment rendered by Lewis. Spiegel's report speaks in very general terms about everyone who treated J.Lamberson as a whole, with the only particularized comment being directed toward the Philhaven defendants, and that only in the context of referencing brief passages from J.Lamberson's own deposition testimony. Dr. Spiegel's report fails to indicate any review or analysis whatsoever of any documentary or testimonial evidence pertaining to the actions of or the treatment rendered by Lewis as to J.Lamberson. This is so despite the fact that there exists treatment notes of the sessions of Lewis and J.Lamberson. This is despite the existence of a taped session with the Plaintiff in which she relates to Lewis her "life's story." This is despite the lengthy deposition taken of Lewis by Plaintiffs' counsel. Spiegel fails to analyze any of this evidence pertaining to the actions and treatment of Lewis. Given J.Lamberson's testimony that she had **no recollection whatsoever** of the actual content of the treatment rendered to her by Lewis, the only source of information concerning the treatment rendered by Lewis is completely disregarded in Dr. Spiegel's expert report and opinion. This is fatal to the use of Spiegel's opinion in

opposition to this motion for summary judgment. Having ignored not only crucial evidence of Lewis' treatment of J.Lamberson, but all of the evidence, Spiegel's report to the extent that the Plaintiffs' hope to rely upon it in support of their claims against Lewis, or in opposition to this motion, must itself be disregarded.

Spiegel's report indicates that he met with J.Lamberson on February 4, 2002, and that he administered certain psychological tests to her on that date. Spiegel's report **fails to indicate that he review any medical record created by any defendant who treated J.Lamberson, or that the reviewed any of the voluminous deposition testimony in this matter.** At no time does Spiegel indicate that his report, his evaluation, his opinions are based on anything but this meeting, his discussion with J.Lamberson and his testing of her on that date. Specifically of note in this regard is the absence of any indication that Spiegel reviewed any of Lewis' treatment notes of his sessions with J.Lamberson, or any of Lewis' deposition testimony given in this matter. The review of the records of treatment rendered by Lewis, and his testimony as to that treatment, as well as J.Lamberson's own testimony as to the treatment rendered by Lewis to her, is absolutely essential to any attempt to opine as to whether that treatment met or fell below the applicable standard of care.³ It is evident that Spiegel's analysis and opinions fail to encompass the treatment rendered by Lewis to J.Lamberson, and is therefore rendered both incompetent as to Lewis' treatment and irrelevant as to any of Plaintiffs' claims against Lewis. Spiegel's opinion fails to either note, discuss or evaluate at all the treatment rendered by Lewis, the diagnosis and/or the diagnostic process engaged in by Lewis, the treatment methodologies employed by Lewis in his treatment of J.Lamberson, or the actual treatment sessions noted in Lewis' records, and discussed in Lewis' deposition testimony.

³ The only deposition testimony that Spiegel refers to are a few brief passages from the deposition testimony of J.Lamberson herself, concerning her responses to questions posed by her therapist while she was an inpatient at Philhaven, in February, 1993.

At no time, with regard to Lewis (or any other treating professional) does Spiegel evaluate any of the information provided to Lewis by J.Lamberson, or the clinical symptoms with which she presented to Lewis. Spiegel fails to evaluate or even to note Lewis' treatment responses to the information and symptoms presented by J.Lamberson during their sessions. Spiegel likewise fails to discuss or even to note what, if any, effect the treatment sessions of Lewis had upon J.Lamberson's condition, and whether, how or to what extent Lewis' treatment sessions had upon the condition of the Plaintiff, or her alleged injuries. Spiegel lumps in very broad and undistinguished terms the entirety of J.Lamberson's four to five years of treatment with the various defendants (and others), and with a wave of his hand, summarily aggregates all treatment into a single lump which he terms "inept psychiatric care" and "inappropriate treatment procedures." This is particularly troublesome as Spiegel never states what any of the "inept psychiatric care" allegedly rendered by Lewis consisted of, and never states what the allegedly "inappropriate treatment procedures" of Lewis' were.

Rule 702 upon its face, requires that the opinion which an expert renders be "based upon sufficient facts or data" and that he apply his analysis "reliably to the facts of the case." Further, emphasized the Daubert Court, the expert's opinions must be "sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute." The expert's proffered opinion must "fit" the facts of the case. United States v. Velasquez, 64 F.3d 844, 850 (3d Cir. 1995).

Here, the factual dispute that the jury will need to resolve is whether the care and treatment rendered to J.Lamberson by moving defendant, Lewis, met the applicable standard of care. How can Spiegel's opinion aid the jury in this determination, when Spiegel's opinions are not based whatsoever in Lewis' care and treatment of J.Lamberson, and where his evaluation that led to his general conclusion that "everyone" was negligent fails to encompass an evaluation of the available evidence as

to what Lewis actually did. It cannot. Spiegel's opinions, as they may be directed to Lewis, are useless to a jury for the simple reason that they are not based upon any evaluation of what Lewis did, and they lack any analysis of Lewis' care and treatment of J.Lamberson. Spiegel's opinions are based almost exclusively in the data and information provided to him by J.Lamberson herself (or her attorneys). Spiegel's opinion is therefore reduced to J.Lamberson's opinion.

The federal courts have consistently held that an expert must have access to and actually consider the relevant "data" before an admissible opinion may be rendered. See, e.g., Adams v. NVR Homes, Inc., 141 F.Supp.2d 554 (D.Md. 2002) (testimony by mapping scientist as to methane seepage into homes was inadmissible as not relevant and unreliable where stereographic photographs of construction site, required to determine which areas contained organic fill, did not exist); Ramsey v. Consolidated Rail Corp., 111 F.Supp.2d 1030 (N.D.Ind. 2000) (hydrologist's testimony that contaminants from a rail yard had reached ground water was not reliable where no explanation given as to why twelve tests taken during relevant 8-year period showed no contamination). Here, Dr. Spiegel's evaluation fails to take into considered the evidence concerning Lewis' actual treatment of J.Lamberson. Where the information upon which an expert bases his opinion are irrefutably erroneous, that opinion is inadmissible. An expert's opinion is inadmissible where it states the ultimate conclusion (i.e., the treatment was negligent) without providing a factual basis. Salas v. Carpenter, 980 F.2d 299 (5th Cir. 1992). That, again, is the position of Dr. Spiegel with respect to his opinion as it may regard moving defendant, Lewis. Guillory v. Domtar Industries, Inc., 95 F.3d 1320 (5th Cir. 1996). Here again, Dr. Spiegel's assumption that no one independently evaluated J.Lamberson's condition is irrefutably erroneous, as the undisputed records and testimony of Lewis establish that he did, in fact, make his own independent diagnosis of J.Lamberson's psychiatric condition.

A simple review of the questions left unanswered by Spiegel's evaluation and opinions is telling: Did Lewis make his own independent evaluation of J.Lamberson's psychiatric condition? (Unknown) What information was provided to Lewis by his patient? (Unknown) what symptomology did J.Lamberson display during their sessions? (Unknown) Of what did Lewis' therapeutic treatment of J.Lamberson consist? (Unknown) What diagnostic tools, methods and testing did Lewis employ in diagnosing J.Lamberson's psychiatric conditions? (Unknown) What diagnosis or diagnoses did Lewis attribute to J.Lamberson's condition, and did it change over time? (Unknown) For what psychiatric conditions did Lewis treat J.Lamberson? (Unknown) Was Lewis' treatment of J.Lamberson specific to MPD/DID, or was it geared toward any of her other psychiatric problems? (Unknown) Was the treatment rendered by Lewis to J.Lamberson beneficial to her condition; did her condition improve during the course of their sessions? (Unknown) Did J.Lamberson's condition worsen at all during the course of Lewis' treatment? (Unknown) These are but a few of the numerous questions that an expert should have considered in an evaluation of whether Lewis' treatment of the Plaintiff met the applicable standard of care. He appears to have considered none of them. He clearly has answered none of them.

Dr. Fink opines that Dr. Spiegel's basic analysis of the treatment rendered by the defendants and the diagnosis of J.Lamberson's condition is flawed because of what it ignores:

In contrast to Dr. Spiegel's assessment, the medical record compiled by a number of mental health professionals, documents the picture of a seriously ill woman with signs and symptoms of depression with suicidality, post-traumatic symptoms, and dissociative signs including, intrusive thoughts, amnesia, and switching into alternate states with "flashback like" experiences. This presentation takes place along with the patient's repeated allegations of childhood abuse. With this clinical picture it remains my opinion that it was both appropriate and consistent with the standard of care to consider PTSD and a Dissociative Disorder. Similarly, the treatment she received seems appropriate for

the level of symptomology she was experiencing.

Dr. Spiegel ignores the patient's medical record in his evaluation. He offers a blanket condemnation of the entire assessment and treatment rendered to Mrs. Lamberson without citing particular areas that he believed fell below the standard of care. With regard to the treatment rendered by Mr. Lewis, Dr. Spiegel fails to identify anything specific concerning Mr. Lewis' treatment that fell below the standard of care. In the absence of specific supporting data from the medical record defining substandard treatment, it seems as though Dr. Spiegel's opinions may be more a reflection of his general opinion about a class of disorders than about the particular findings of the treatment of Mrs. Lamberson by Mr. Lewis.

Ex. "Q", at 6.

Spiegel, accordingly, fails to render an opinion as to the treatment, diagnosis or care rendered by Lewis. To the contrary, Dr. Fink renders the opinion, after actually reviewing the available evidence:

Based upon my review of Mr. Lewis' deposition testimony and his session progress notes, it is my opinion, within a reasonable degree of medical certainty that he conducted a proper assessment including, history taking from both the patient and her husband and administration of the Dissociative Experience Scale. It remains my opinion, within a reasonable degree of medical certainty, that his treatment was within the standard of care for the treatment of a dissociative disorder patient.

Ex. "Q", at 7.

Spiegel initially frames what he sees as the issue begin evaluated thus:

Mrs. Lamberson, in her effort to seek psychotherapeutic help with menopausal depression, was mis-diagnosed and treated for Multiple Personality Disorder. As a result, she received inept psychiatric care and inappropriate treatment procedures in various hospitals and from a variety of private therapists. The mis-directed care seriously aggravated her life circumstances and interrupted her ability to work, causing more emotional pain and depression. When, on her own, she eventually decided to stop the therapies and phase out the complex medication program, she gradually began to feel better and has maintained an improved state as of the present time.

Ex. "O", at 1. Spiegel then discusses the testing he performed on J.Lamberson and,

summarizes his criticisms of the treatment provided “in hospital and with private therapists.” Without pointing to any particular testimony or treatment record with respect to any particular treating professional, Spiegel makes the following criticisms:

- 1) Heavy anti-depressant and anti-anxiety medications were prescribed.
- 2) In the absence of spontaneous, enduring alters with self-evolving names, the therapists imposed an MPD concept upon Mrs. Lamberson, coerced her to act out alters and instructed her to give them names. . . .
- 3) Hypnosis was used as a ceremony and rationale to influence her behavior and change her perspective, talking her into accepting two episodes as proof she was sexually abused as a child. . . .
- 4) As her confusion, despair and anxiety increased, she was repeatedly told: “It’s going to get worse before it gets better.” . . .
- 5) The MPD label was applied early during her first Philhaven hospitalization. Not a single therapist challenged the diagnosis after that.
- 6) No one tested her for dissociative or hypnotic capacity.

A brief review of each of these points, upon which Dr. Spiegel relies for his general opinions as to the defendants’ liability reveals that his opinion states pure and unsupported speculation, and is not based upon any evidence of record with regard to moving defendant, Lewis. The critical factual bases upon which Spiegel generally renders his opinions as to J.Lamberson’s treating professionals, as seen below, has no factual support in the record, and is based solely upon what J.Lamberson (and/or her counsel) told him.

- (a) **There is no evidence of record that during J.Lamberson’s treatment by Lewis, she was using “heavy anti-depressant and anti-anxiety medications”**

Dr. Spiegel’s first point, that “[h]eavy anti-depressant and anti-anxiety medications were prescribed” during the treatment of J.Lamberson, fails to find any support in the record. While the record reveals that J.Lamberson, at various times,

through various physicians, was prescribed various medications, there is no evidence of record that she was under the influence of, or was in any way incapacitated or functioning in a reduced capacity due to, the heavy use of anti-depressant or anti-anxiety medications. Dr. Spiegel fails to point to any evidence that would support his conclusion, and the record is devoid of such evidence. Neither does Dr. Spiegel pretend to be an expert in pharmacology, or in the effects upon a patient by the use of various psychiatric medications.

Dr. Spiegel's report fails to indicate that he has made any study of the medication prescription use or history of J.Lamberson. His report fails to indicate that he even has this information. Discovery in this matter fails to reveal that this information has even been produced in this matter to any extensive degree. What documentation has been produced fails to support the conclusion that J.Lamberson had been prescribed or had been taking "heavy doses" of any psychiatric medications, throughout her treatment by the defendants generally, or specifically during her period of treatment by Lewis. The only source for this conclusion by Dr. Spiegel appears to be his discussion with J.Lamberson on February 4, 2002, and/or his communications with Plaintiffs' counsel. Even with such a contention by the Plaintiff, expert testimony is required to support the conclusion that the medications being taken by the Plaintiff had any effect upon her treatment, or the alleged "influencing" of her thoughts and memories by the defendants. Finally, as a therapist, and not a treating psychiatrist, Lewis had no ability to prescribe any medications, and as a matter of law had no responsibility for the prescription or management of psychiatric medications which may or may not have been in use during the course of his therapy sessions with J.Lamberson.

Contrary to Dr. Spiegel's assertions, Dr. Fink in his initial report (Ex. "P") reviews the available medication records of J.Lamberson and concludes that the psychiatrically-

related medications which J.Lamberson was taking at various times, were appropriate to her psychiatric symptoms, and within appropriate dosage ranges, if not on the low side. This is contrary to Dr. Spiegel's assumption (based solely upon statements made by J.Lamberson or her counsel, and not a review of her medication history) that J.Lamberson was under "heavy" psychiatric medications that made her more "vulnerable" and "impaired her ability to properly question her treatment or her diagnosis." Dr. Fink concludes, after an appropriate review and assessment of her medication history, that "within a reasonable degree of medical certainty, that it is highly unlikely that either of these medicines would impair Mrs. Lamberson's mental abilities to the point that she could no longer raise questions about any aspect of her psychiatric care." (Ex. "P", at 15-16)

Accordingly, this conclusion by Dr. Spiegel remains a baseless and unsupported conclusion, one which must be rejected.

- (b) Dr. Spiegel's conclusion that there was an "absence of spontaneous, enduring alters with self-evoking names" and that the "therapists *imposed* an MPD concept upon Mrs. Lamberson, coerced her to act out alters and instructed her to give them names" is wholly without any factual support in the record as regards moving defendant, Lewis.**

In his second conclusion, Dr. Spiegel asserts that there was an "absence of spontaneous, enduring alters with self-evolving names, the therapists imposed an MPD concept upon Mrs. Lamberson, coerced her to act out alters and instructed her to give them names." Again, as with the first of his conclusions, this conclusion fails to find any factual support whatsoever in the record of this matter, and specifically finds no support with regard to moving defendant, Lewis' treatment of J.Lamberson.

Initially, Dr. Spiegel's assertion that there was an "absence of spontaneous, enduring alters with self-evolving names" during the course of Lewis' treatment of J.Lamberson is patently false, as demonstrated by the uncontradicted testimony of both

Plaintiff, J.Lamberson and moving defendant, Lewis. Neither Spiegel's report nor the record in this matter provides any support of these conclusions as to Lewis. A review of their testimony, as well as the notes of Lewis' sessions with J.Lamberson, clearly demonstrates that J.Lamberson presented, both spontaneously and fluidly with alternate personalities, during many of her sessions with Lewis. The appearances of these alters persisted in a pattern over the time period of their sessions, appeared spontaneously and without any prompting or request by Lewis, required no action on his part to evoke, and came complete with their own self-proclaiming names, none of which was suggested by Lewis.

Further, Dr. Spiegel's contention that the "therapists imposed an MPD concept" upon the Plaintiff, and that they "coerced her to act out alters and instructed her to give them names" is likewise utterly false and made in a thoroughly irresponsible manner in regard to Lewis. There exists no supporting evidence in the record. Period. Finis. To the contrary, according to Lewis' treatment notes and testimony, uncontradicted (and in many respects supported) by J.Lamberson's own testimony, the Plaintiff presented at her initial session with a self-report of having MPD, describing various supportive symptoms of MPD, described the appearance and naming of alternate personalities, and described various incidents supportive of the diagnosis. Further, the Plaintiff during numerous sessions, without any prompting or requesting by Lewis, and without the use or need of any hypnosis, fluidly and frequently went in and out of numerous alternate personalities. During these sessions with Lewis, she communicated and identified herself as these alternate personalities, had lengthy and detailed discussions with Lewis as various alternate personalities, and afterward claimed no memory of what she did or said while in these alternate personalities.

There exists no evidence of coercion by Lewis during his sessions with J.Lamberson. There exists no evidence that Lewis "imposed" any ideas, thoughts,

memories or concepts upon the Plaintiff during their sessions. Even J.Lamberson herself fails in her deposition testimony to make any such claims. What little she can recall of her sessions with Lewis is innocuous, and she has testified that, for the most part, she can recall nothing of her sessions with Lewis. Nothing. Period. Lewis' testimony and session notes support only a conclusion that no coercion took place during their sessions, that Lewis provided Plaintiff with a receptive ear, and was presented with a patient who, from their first session, was blatantly and openly manifesting alternate personalities, with whom Lewis communicated. There is no evidence of coercion by Lewis. There is no evidence that he told her to create any alters. There is no evidence that Lewis told Plaintiff to name her alternate personalities. There is no evidence that Lewis "imposed" MPD upon J.Lamberson. These assertions by Dr. Spiegel as to Lewis constitute simple, unsupported nonsense.

J.Lamberson testified that when she first went to Lewis for treatment, she presented to him with symptoms of MPD. (Ex. "C", at 103) At that time she believed that she had MPD, and she told him so. (Ex. "D", at 13) During their first session, she told Lewis that she had been diagnosed with MPD, and that she was comfortable with that diagnosis. (Ex. "N", 2/21/94 notes) She told Lewis that she was aware of the existence of her alternate personalities, including their names, sexes and behaviors. (Ex. "N", 2/21/94 notes) J.Lamberson testified that for the most part she had no recollection of what transpired during her sessions with Lewis. (Ex. "D", at 32, 34-35) J.Lamberson testified that she has no reason to believe that Lewis ever told her what to think or what her memories were. (Ex. "D", at 83) She testified that she has no knowledge or information that Lewis did anything to implant any memories, or to suggest any memories to her. (Ex. "D", at 100-101)

The testimony of both J.Lamberson and Lewis, and Lewis' treatment notes make clear that Dr. Spiegel's assertions are nonsense and irresponsibly made. Therefore,

this conclusion of Spiegel's must be rejected.

- (c) **There exists no evidence that moving defendant, Lewis, used hypnosis “as a ceremony and rationale to influence [J.Lamberson’s] behavior and change her perspective, talking her into accepting two episodes as proof she was sexually abused as a child.”**

Dr. Spiegel next concludes that “[h]ypnosis was used as a ceremony and rationale to influence her behavior and change her perspective, talking her into accepting two episodes as proof she was sexually abused as a child.” As with his prior two conclusions, this one fails to find any support in the record. This contention is easily disposed of as to Lewis as the record is clear that Lewis **never utilized hypnosis** during his sessions with J.Lamberson. Lewis testified that he never used hypnosis in his treatment of the Plaintiff, and J.Lamberson in her deposition testimony stated that she does not recall if Lewis used hypnosis. In any event, as noted earlier, J.Lamberson testified that she cannot recall what happened during her treatment sessions with Lewis, and therefore cannot dispute Lewis’ account that no hypnosis was used during their sessions. As with his other conclusions, as regards Lewis’ treatment, there is no indication that Dr. Spiegel ever reviewed either the treatment notes of Lewis, or Lewis’ deposition testimony, in making this broad, baseless conclusion.

Dr. Fink, in his review of J.Lamberson’s overall history of treatment at issue in this case, disagrees with Dr. Spiegel’s foundationless conclusions in this regard. Dr. Spiegel’s opinion appears to be based solely upon the assertion made by J.Lamberson that prior to her treatment at Philhaven she had none of the memories in question, and that after her treatment there, she had the memories. Dr. Fink’s review and evaluation concludes that when used in her treatment (such as by Donato at Philhaven), hypnosis was used for the purpose of “temporizing and containment measures including the construction of a ‘safe place’.” He concludes that there exists no evidence that any

hypnosis was used for the purpose of instilling memories. (Ex. "P", at 15) Again, Dr. Fink's conclusions are based on his review and evaluation of the evidence and records of treatment in this matter. Dr. Spiegel's findings are based solely upon J.Lamberson's assumption, and therefore an assumption by Dr. Spiegel, that memories must have been instilled by Donato at Philhaven because Plaintiff reports that she did not have the memories before Philhaven, and yet had them after Philhaven. Such a conclusion can only be seen as baseless and unsupported as J.Lamberson admits that she has no recollection whatsoever of anything that transpired during her sessions with Donato and had to be told by Ms. Donato, *after the session and the alleged hypnosis had ended*, what she (J.Lamberson) had said during the session. Likewise, J.Lamberson admits that she had no independent recollections whatsoever of anything that transpired during her therapy sessions with Lewis, this despite the fact that hypnosis was not utilized during her sessions with Lewis as her alternate personalities spontaneously appeared.

Again, Dr. Spiegel fails to review and evaluate the evidence and testimony in this matter, and simply relies upon what J.Lamberson and her counsel have told him. Lewis testified that he never used hypnotherapy in his treatment of J.Lamberson. (Ex. "K", at 17) The only recollection which J.Lamberson could testify to, which she believed may have involved hypnosis when Lewis shut the blinds and dimmed the lights in the room in which they were speaking, and made her feel relaxed:

Well, this is what I recall, I remember him shutting the blinds and dimming the lights and the same type of thing, put me in a relaxed state, and then after that, truly **I would be guessing**. (emphasis added)

Ex. "D", at 32) She testified that she had no recollection of anything that transpired when she was "relaxed." (Ex. "D", at 34-35) J.Lamberson also testified that she does not recall Lewis ever using the term "hypnosis" with regard to her treatment, and does not recall him ever telling her that he was going to hypnotize her. (Ex. "D", at 30)

Accordingly, there exists no support in the record that would support this

conclusion of Dr. Spiegel's as applied to moving defendant, Lewis, and it must therefore be rejected.

- (d) There is no evidence that Lewis ever told J.Lamberson that she had to “get worse before [she] got better,” and no indication that any such statement bears any relevance to the standard of care, or Lewis’ care rendered thereunder.**

Dr. Spiegel next concludes that “[a]s her confusion, despair and anxiety increased, she was repeatedly told: ‘It’s going to get worse before it gets better.’” Even if the making of such a statement could be considered relevant to any issue in this matter (and there is no indication that there exists any relevance), there is no evidence that moving defendant, Lewis ever made this statement. Lewis testified that he made no such statement to J.Lamberson. Again, Plaintiff cannot substantiate that Lewis made any such statement, as she has testified that she cannot recall the content of any of their sessions. J.Lamberson herself testified that she has no recollection of Lewis telling her that things would get worse before they got better. (Ex. “D”, at 54, 99)

Spiegel's conclusion, therefore, that such a statement was made by someone, and that it is somehow relevant to the standard of care, or Plaintiff's treatment thereunder, is irrelevant to Lewis. There is no evidence whatsoever that he ever made such a statement. Accordingly, this conclusion (or contention) by Dr. Spiegel must be rejected.

- (e) Dr. Spiegel's conclusion, as applied to moving defendant, Lewis, that once the “MPD label was applied” to J.Lamberson at “her first Philhaven hospitalization” - “[n]ot a single therapist challenged the diagnosis after that”, is patently false, unsupported by the evidence, and must be rejected.**

The next conclusion jumped at by Dr. Spiegel generally as to all defendants is that “[t]he MPD label was applied early during her first Philhaven hospitalization. Not a single therapist challenged the diagnosis after that”. Dr. Spiegel blithely adopts the

Plaintiffs' monotonous cry that no one ever "challenged" the diagnosis of MPD once it had been made by the professionals at Philhaven Hospital. This statement is blatantly false at a variety of levels. Initially, according to J.Lamberson's own testimony (later repeated by Dr. Spiegel during his deposition, in reference to what the Plaintiff told him), the first mention of MPD as the condition from which J.Lamberson suffered, came from Plaintiff's private therapist, Patricia Benzenhafer, who had been treating the Plaintiff as an outpatient for approximately a year **before** J.Lamberson was admitted to Philhaven. J.Lamberson told Janet Donato that it was Benzenhafer's inability to deal with what Benzenhafer believed might be a case of MPD, that caused her to refer J.Lamberson to Philhaven in the first place. (Ex. "H", 76) Benzenhafer testified that she had already made a diagnosis of MPD prior to the flashback incident involving her husband. (Ex. "G", at 57) .Lamberson told Lewis that she had been hospitalized previously because her husband and Benzenhafer could not deal with the flashback she had been having, and because of the attempts to hurt herself by the angry male alter. (Ex. "N", 2/23/92 notes) Thus, the predicate of the first part of this conclusion by Dr. Spiegel is false, and is typical of his slipshod mishandling of the record in this matter. It further demonstrates what is painfully obvious about Dr. Spiegel's review of this matter: he has thoroughly failed to review and consider the actual treatment, symptoms and presentation of the Plaintiff to her treating professionals in arriving at his conclusions. Spiegel simply presents as his evaluation of this matter his barren hypothesis about Plaintiff's treatment, bereft of any basis in the record.

Next, with respect to Lewis' treatment of the Plaintiff, Dr. Spiegel's conclusion that "[n]ot a single therapist challenged the diagnosis [of MPD] after" it was first applied, is likewise a clearly false conclusion. Dr. Spiegel can only arrive at this conclusion by failing to review or consider (or perhaps, even be aware of) the deposition testimony, and treatment records of moving defendant, Lewis. Lewis testified, **and there exists**

no evidence to the contrary, that he evaluated J.Lamberson's condition and symptoms and presentation, and based upon this, and the administration of the "DES" test, made his own independent diagnosis, that Judith Lamberson was suffering from MPD/DID at the time she came to him for treatment. This fact is uncontroverted by the record. Lewis' testimony is undisputed by the record. There is no dispute as to the existence of the symptomology in J.Lamberson at the time; no dispute as to her presentation of these symptoms in sessions with Lewis; and no despite as to her manifestation of numerous alternate personalities in a persistent pattern over the course of the several months that she treated with Lewis. The premise of Dr. Spiegel, as regards Lewis, that he simply accepted someone else's MPD diagnosis and "ran with it," so to speak, is laid bare for what it is: the nonsensical drivell of someone who has arrogantly failed to take even the most basic step required of every expert witness, consider the record in this matter, particularly where it is not the subject of dispute.

Lewis testified that he made his own independent assessment of J.Lamberson's diagnosis, and testified that the factors in coming to the diagnosis included: (1) her experiences as a child in an alcoholic family, with various forms of physical, emotional and possible sexual abuse, as related to him by J.Lamberson; (2) J.Lamberson's reports of other problems, such as psychosomatic gastrointestinal problems starting at a very young age, becoming hypervigilant and having certain behavioral problems, consistent with someone attempting to deal with her environment and beginning to separate; and (3) having other psychological manifestations, bullemia, dependent personality disorder, and J.Lamberson's presentation to Lewis of various alternate personalities. (Ex. "K", at 136-138) Lewis further testified that he never ordered J.Lamberson's prior medical records because he did not want to be influenced by their treatment history in the making of his own independent diagnosis. (Ex. "K", at 140)

J.Lamberson herself does not dispute that Lewis made his own independent diagnosis of her condition when he treated her, in fact, she testified that she believes that it is possible that Lewis did made his own independent diagnosis. (Ex. "D", at 49-50)

The difficulty with this conclusion of Dr. Spiegel's, as with his other conclusions (as applied both generally to all defendants, and specifically to Lewis), is that he acts as cheerleader for the Plaintiffs' theories of the case, **even where the undisputed record is contrary**. In the case of moving defendant, Lewis, there exists virtually no evidence in the record which would support any of the necessary conclusions made by Dr. Spiegel in support of his overall opinion that all of the defendants mis-diagnosed the Plaintiff, and rendered inept care and inappropriate treatment. As noted previously, there is no indication that Dr. Spiegel ever reviewed any of Lewis' deposition testimony, Lewis' treatment notes of sessions with the Plaintiff, or even the Plaintiff's testimony relating to her treatment with Lewis. Not once in his report does Spiegel mention Lewis, or note anything which Lewis did in his treatment of J.Lamberson that fell below the applicable standard of care. Neither does Spiegel even bother to articulate the standard of care of a therapist who is referred a patient who self-reports that she has MPD, who has readily observable symptoms like the plaintiff, who is freely manifesting numerous alternate personalities, personalities which persist in a pattern throughout their period of therapy.

Lewis' treatment of J.Lamberson, as reflected in his testimony, J.Lamberson's testimony, in Lewis' treatment notes, and in the thoughtful and detailed evaluation made of the record by Dr. Fink, demonstrates that, when the facts are actually examined and reviewed in this matter (something clearly not done by Dr. Spiegel in regard to Lewis), it is indisputable that the care and diagnosis by Lewis meets the applicable standard of care, and comports with the diagnostic criteria for MPD/DID

contained in the DSM IV.

- (f) Dr. Spiegel's contention that "[n]o one tested [J.Lamberson] for dissociative or hypnotic capacity" misstates the appropriate diagnostic criteria for MPD/DID, and fails to account for the symptomology presented to moving defendant, Lewis, by J.Lamberson.**

Dr. Spiegel finally concludes that the defendants generally failed in their diagnosis of J.Lamberson's condition because "[n]o one tested her for dissociative or hypnotic capacity". This conclusion, which again, as relates to Lewis, is not based upon any review of the facts pertaining to the diagnosis or treatment of Plaintiff by Lewis, serves to mis-state the diagnostic criteria for MPD/DID, as set forth in the DSM (the Diagnostic and Statistical Manual), the diagnostic handbook of the American Psychiatric Association. Dr. Spiegel's opinion that the defendants failed to properly diagnose J.Lamberson's condition, is contingent upon his view that (1) the proper diagnosis of MPD/DID requires the finding of a certain degree of "dissociative or hypnotic capacity", and that (2) certain testing methodologies (of Spiegel's own creation) must be utilized in making these determinations. Not only is this a mis-statement of the established and generally recognized diagnostic criteria for MPD/DID, but the testing methodologies upon which Spiegel relies (his own), are flawed, and Spiegel's reliance upon them lack credibility, and must be rejected.

These two issues are discussed in detail in Section 4, below. For those reasons, Spiegel's opinions as to moving defendant, Lewis, must be rejected.

- (g) Dr. Spiegel's evaluation of the evidence as to Lewis is fatally flawed because of his failure to consider and evaluate in his opinion the evidence which exists specifically concerning Lewis' treatment. As a consequence, Plaintiffs lack an expert opinion to support a negligence claims against Lewis.**

Where an expert, rendering an opinion concerning a particular defendant's care

and treatment, disregards, fails to evaluate and take into consideration the actual available evidence concerning that treatment that is the subject of his opinion, the opinion is undermined to such an extent as to render it moot. The Third Circuit Court of Appeals addressed this very issue in Doby v. DeCrescenzo, et al., 171 F.3d 858 (3d Cir. 1999), in the context of the grant of summary judgment to a psychiatrist who performed a psychiatric evaluation of the plaintiff in that case for the purpose of determining whether she should be subjected to an involuntary hospitalization. The plaintiffs' expert in Doby evaluated the actions of the psychiatrist in detail, considered the mental status examination and the circumstances surrounding the involuntary examination, and concluded that the examination was "grossly inadequate," that the psychiatrist had failed to inquire about the common symptoms of depression, had failed to adequately evaluate her suicidality, and had failed to access collateral sources of information, such as her husband and her treating psychiatrist. The Court concluded that the expert's report had suggested, as required for the claim, that the psychiatrist had acted with "gross negligence" (the threshold under Pennsylvania law for a claim against a psychiatrist making a commitment determination). The Court, however, went on to note that the expert had failed to take into consideration two important documents pertaining to the plaintiff's condition, and that this failure undermined his opinion that the psychiatrist had acted with gross negligence:

However, Dr. Applebaum's failure to discuss in *any way* the contents of the 11-page letter and the suicide note suggests a lack of familiarity with the basic facts of the case. ... This apparent ignorance of Doby's writings, which represented crucial evidence of her mental state, undermines Dr. Applebaum's conclusions regarding Dr. Richards' actions.

Id., 171 F.3d at 876. The Third Circuit upheld the lower court's grant of summary judgment in favor of the psychiatrist, holding that Dr. Applebaum's failure to consider the suicide notes in his opinion fatally undermined the opinion that Dr. Richards had acted with gross negligence. Id. The same criticism can be made of Dr. Spiegel's

review of the record in this matter and evaluation of the care rendered by Lewis to J.Lamberson. Here, Dr. Spiegel not only fails to consider crucial evidence pertaining to Lewis' treatment of the Plaintiff, he fails to consider or evaluate any of the available evidence, the session notes, the taped session, the deposition testimony of Lewis. None of it. Dr. Spiegel's report fails to even mention the name Jason Lewis. As the Third Circuit held in the Doby case, Dr. Spiegel's failures here in the evaluation of the treatment provided by Lewis to J.Lamberson, renders his opinion as to Lewis so undermined as to moot it entirely. Consequently, there exists no legitimate expert opinion pertaining to the standard of care applicable to Lewis, or as to whether Lewis' actions comported with that standard of care. Without the testimony of a qualified expert that the actions taken by Lewis in his treatment of J.Lamberson fell below the applicable standard of care, the cannot proceed in any such claim, and accordingly, their claims as against moving defendant, Lewis, should be dismissed with prejudice.

4. **Plaintiff's sole expert, Herbert Spiegel, M.D., relies in his opinion that the defendants failed to properly diagnose J.Lamberson's condition, upon the use of his own testing methodology, where he admits that he has never diagnosed any patient as having MPD/DID. Dr. Spiegel is clearly unqualified to render any opinion as to the diagnosis of a condition that he has never himself seen in a patient, particularly where he relies upon a testing methodology of his own creation that he admits has never been validated in the context of diagnosing MPD/DID.**

Plaintiffs' sole expert, Herbert Spiegel, M.D., relies in his opinion that the defendants failed to properly diagnose J.Lamberson's psychiatric condition upon the contention that they should have utilized, *inter alia*, one or more testing methodologies of Spiegel's own creation. While, according to Dr. Spiegel, these testing methodologies (the "Locus of Control," the "Mindstyles" and the "Hypnotic Induction Profile") do not themselves serve to diagnose MPD/DID, they reveal the presence or absence of certain psychiatric or personality traits (dissociative or hypnotic capacity) within the patient that

must be present in order to properly diagnose the patient as having MPD/DID.

According to Dr. Spiegel, since the defendants failed to use these testing protocols in their diagnosis of J.Lamberson's condition, they were negligent and failed to properly diagnose her condition.

There exist, however, two very simple and fatal flaws in Dr. Spiegel's opinions in this regard. First, Dr. Spiegel, who has been practicing for more than sixty (60) years, and who has extensively treated, studied, experimented and practiced in this and related areas, and both treated, studied and evaluated thousands of patients, admits in his deposition testimony that **he has never seen, treated or diagnosed a single patient whom he believes had a legitimate case of MPD/DID.** Thus, while opining that others had negligently misdiagnosed J.Lamberson as having MPD/DID, Dr. Spiegel, in his vast, lengthy professional career has, himself, never diagnosed a single patient with MPD/DID. He has **never** seen or treated a patient with the condition. Dr. Spiegel concedes, as he must to maintain credibility in the American psychiatric community, that MPD/DID constitutes a legitimate psychiatric condition, a legitimate psychiatric diagnosis, but he remains, by his own testimony, highly skeptical of the diagnosis. The farthest Dr. Spiegel seems to be willing to go in his professional acknowledgment of the existence of MPD/DID as a psychiatric disorder is to, almost grudgingly, acknowledge that the existence of the disorder is "theoretically" possible. Throughout his career, Dr. Spiegel testified, he has had a couple of patients who might have been on the verge of developing MPD/DID, but through Dr. Spiegel's intervention, he quickly "cured" them, so that they never actually developed the condition.

A further problem with Dr. Spiegel's qualification to provide an expert opinion in this matter, is that, by his own testimony, the very testing methodologies which form the basis for his criticisms of the diagnosis made by the defendants of MPD, the testing which Dr. Spiegel insists is required if a valid diagnosis of MPD/DID is to be made, have

never been used by him or validated by him in the diagnosis of the condition. While Dr. Spiegel has testified that in the development of these testing methodologies, most importantly with respect to the “Hypnotic Induction Profile”, he has applied them to perhaps thousands of patients and subjects over several decades, once again, he cannot state that they have ever been validated upon a patient that has had a legitimate diagnosis of MPD/DID. Again, Dr. Spiegel has never seen a patient with a legitimate diagnosis of MPD/DID. Dr. Spiegel, in the development and validation of these testing methodologies, has never used them on a patient with a legitimate case of MPD/DID. How then can Dr. Spiegel rely upon these testing methodologies in the diagnosis of anyone with MPD/DID? How then can Dr. Spiegel claim that the use of these testing methodologies in the diagnosis of MPD/DID is essential? How then can Dr. Spiegel assert that the failure to utilize these testing methodologies when ascribing MPD/DID to a patient constitutes negligence? Simply, he cannot.

The Daubert requirement that the theory utilized by an expert in forming his opinion “can be (and has been) tested,” and must be “capable of empirical test” demands, based upon Dr. Spiegel’s own testimony, that his opinions be rejected. While Dr. Spiegel states that he has applied his testing methodologies to thousands of patients and research subjects over decades, and that others have similarly done so to thousands more, incredible, he also testified that he has **never** himself, in his own practice or research, or in the efforts of others, seen a single patient diagnosed as actually having a legitimate case of MPD/DID. He has used his methodologies (the “Locus of Control,” the “Mindstyles” and the “Hypnotic Induction Profile”) in the assessment and diagnosis of patients whom he has concluded **did not** have MPD/DID, but he has never, ever done so in a patient whom he has concluded **did** have MPD/DID. Accordingly, based upon Dr. Spiegel’s own testimony, the testimony of the creator of these testing methodologies, they have never been utilized to his knowledge

by anyone (and certainly not by Dr. Spiegel himself) to diagnose a patient as having MPD/DID. How then can his opinion, which hinges upon his belief that a diagnosis of MPD/DID **without** using these testing methodologies constitutes malpractice, possible stand? It cannot.

Even in terms of basic, common sense, the service of Dr. Herbert Spiegel as an expert rendering the opinion that certain treating professionals misdiagnosed MPD/DID makes no sense. An opinion by Dr. Spiegel that the failure to utilize unproven and unvalidated diagnostic testing methodologies of his own creation constitutes negligence—where he himself has not only never used these criteria to successfully diagnose a patient as having MPD/DID, but he himself has never even seen, treated or diagnosed a patient during his sixty year career with a legitimate case of MPD/DID—is nothing short of laughable. It strains credibility to suggest that someone can provide an expert opinion in the diagnosis of a psychiatric condition where that expert **has never seen** a patient with the condition. Where that expert **has never diagnosed** a patient with a “legitimate” case of that condition. Where that expert believes only that the existence of a patient with a “legitimate” case of that condition **may be theoretically possible**. Where, in all likelihood, and from the available evidence in the form of that expert’s deposition testimony, that expert **does not actually believe** that the psychiatric condition at issue even exists. Dr. Spiegel is unqualified to offer an expert opinion as to the proper diagnosis of a patient with MPD/DID, and his opinion that the defendants improperly diagnosed J.Lamberson with MPD/DID must be rejected as a matter of law. Dr. Herbert Spiegel’s opinions regarding the diagnosis of MPD/DID are, according to his own deposition testimony, without any weight whatsoever, and must be disregarded. Accordingly, the Plaintiffs have failed to submit an expert opinion as to the applicable standard of care, and as to whether the diagnosis and treatment rendered by moving defendant, Lewis, failed to meet that standard of care.

In addition, the DSM's diagnostic criteria for MPD/DID does not require the use of these (or any particular) testing methodologies, but rather, requires the satisfaction of certain specified diagnostic criteria. (See discussion of the DSM's diagnostic criteria for MPD/DID, in Part C, below, and the discussion contained in Dr. Fink's reports, Exs. "P" and "Q")

B. Plaintiff's have failed to prove that moving defendant, Lewis, implanted any memories in Plaintiff, Judith Lamberson, and the Plaintiffs' claims must therefore be dismissed.

There exists no evidence whatsoever that moving defendant, Lewis, acted to "implant" any memories into Plaintiff, J.Lamberson. Neither the treatment notes of Lewis, nor Lewis' deposition testimony, nor the deposition testimony of J.Lamberson herself, even suggests that Lewis did anything to implant any memories into the Plaintiff. Nor does the opinion of Plaintiff's expert, Herbert Spiegel, M.D., even suggest that Lewis did anything to implant memories into J.Lamberson. (As discussed above, Spiegel fails to evaluate any aspect of the treatment, care or diagnosis by Lewis of J.Lamberson's condition.) See the discussion of the record concerning this issue, in Section A-3(b), above.

C. Plaintiff's have failed to prove that moving defendant, Lewis, improperly diagnosed Plaintiff, Judith Lamberson, as having Multiple Personality Disorder, or Dissociative Identity Disorder, and the Plaintiffs' claims must therefore be dismissed.

The crux of the opinions of Plaintiffs' expert, Herbert Spiegel, M.D., that the treatment provided by the defendants (in general) was negligent, is Spiegel's contention that the diagnosis of Multiple Personality Disorder (MPD), or Dissociative Identity Disorder (DID) as the condition is now termed, was incorrect from the start, and that none of the defendants thereafter even questioned whether J.Lamberson had MPD, or

employed the correct diagnostic criteria.

The standard criteria used in the psychiatric profession for the definition and diagnosis of MPD (or DID), is provided by the Diagnostic and Statistical Manual (the “DSM”), a publication of the American Psychiatric Association, which forms the basis for the diagnosis and treatment of all psychiatric disorders by treating professionals in the United States. The DSM provides the criteria that a patient must meet for the diagnosis of any particular psychiatric disorder, as follows:

Diagnostic criteria for 300.14 Dissociative Identity Disorder

- A. The presence of two or more distinct identities or personality states (each with its own relatively enduring pattern or perceiving, relating to, and thinking about the environment and self).
- B. At least two of these identities or personality states recurrently take control of the person’s behavior.
- C. Inability to recall important personal information that is too extensive to be explained by ordinary forgetfulness.
- D. The disturbance is not due to the direct psychological effects of a substance (e.g., blackouts or chaotic behavior during Alcohol Intoxication) or a general medical condition (e.g., complex partial seizures).
Note: In children, the symptoms are not attributable to imaginary playmates or other fantasy play.

Diagnostic and Statistical Manual of Mental Disorders: DSM-IV-TR (American Psychiatric Association, July 2000).

Lewis testified that he made his own independent assessment of J.Lamberson’s diagnosis, and testified that the factors in coming to the diagnosis included: (1) her experiences as a child in an alcoholic family, with various forms of physical, emotional and possible sexual abuse, as related to him by J.Lamberson; (2) J.Lamberson’s reports of other problems, such as psychosomatic gastrointestinal problems starting at a very young age, becoming hypervigilant and having certain behavioral problems,

consistent with someone attempting to deal with her environment and beginning to separate; and (3) having other psychological manifestations, bulimia, dependent personality disorder, and J.Lamberson's presentation to Lewis of various alternate personalities. (Ex. "K", at 136-138) Lewis further testified that he never ordered J.Lamberson's prior medical records because he did not want to be influenced by their treatment history in the making of his own independent diagnosis. (Ex. "K", at 140)

J.Lamberson herself does not dispute that Lewis made his own independent diagnosis of her condition when he treated her, in fact, she testified that she believes that it is possible that Lewis did made his own independent diagnosis. (Ex. "D", at 49-50)

David L. Fink, M.D., reviewed the treatment received by J.Lamberson in this matter, and issues two reports concerning his review and findings. (See. Exs. "P" and "Q") In his first report, Dr. Fink reviews the information and symptomology presented by J.Lamebrson to Lewis, and evaluates the information available to Lewis with regard to the DSM's diagnostic criteria for MPD/DID, and concludes that "it was reasonable and appropriate for a clinician to consider and explore the diagnosis of a dissociative disorder as one of the likely disorders to explain her clinical presentation." (Ex. "P", at 12-13)

Dr. Spiegel criticizes, generally, the Plaintiff's therapists for failing to "verify the historical reality" of J.Lamberson's recollections of childhood abuse. Dr. Fink notes that "[i]t is not for the therapist or psychiatrist to confirm or certify these matters but rather to work with the patient in their own efforts to come to terms with their own personal histories and personal truths." (Ex. "P" at 14) Dr. Spiegel, neither in his report nor in his deposition testimony, can explain even how the therapists could have attempted to

have verified the information being provided to them by J.Lamberson.⁴ The suggestion, as Dr. Fink explains, is an untenable one.

Further, Dr. Fink observes, Dr. Spiegel's conclusion that J.Lamberson was misdiagnosed with MPD/DID, is based upon a faulty reading of the diagnostic criteria of the DSM-IV (as given above):

Dr. Spiegel's conclusion that Mrs. Lamberson was "misdiagnosed and treated for MPD" is based upon a skewed and incomplete reading of the DSM-IV, the standard psychiatric diagnostic manual. First, he includes only two of the four diagnostic criteria, and selectively excludes the amnesia criteria. It remains my opinion that Mrs. Lamberson demonstrated the presence of two or more distinct personality states and that they recurrently took control of her behaviors. These personality states were noted by Mr. Lamberson prior to his wife's treatment on more than one occasions.

Ex. "Q", at 2. Dr. Fink observes, Dr. Spiegel in his evaluation of J.Lamberson's treatment, uses as his primary (and only) source of information, the statements of J.Lamberson herself:

It is not reasonable to rely upon the patient as if she is a credible reporter what at other times she has made allegations of abuse, which are now being recanted. It seems more reliable to base a diagnosis upon clinical and historical information, including Mrs. Lamberson's spontaneous dissociative episodes, as witnessed by her husband, the suspicions of Ms. and Pastor Benzenhafer about her possible history of abuse, the findings of Dr. Sell, and the observations of the treatment teams at Philhaven, Deerwood, Shoreline and Preferred Behavioral Health. Dr. Spiegel, however, discounts these findings and opines that

⁴ It is clear, however, that in New Jersey, the psychiatrist/therapist-patient privilege would have prohibited J.Lamberson's therapists and psychiatrists from having breached their confidential relationships with their patient to have "explored" historically the veracity of the information obtained in their sessions with J.Lamberson. The privilege would have barred their disclosure of any of their communications with J.Lamberson to any third parties, even to her husband, T.Lamberson, to the extent that the communications occurred in sessions in which he did not participate. There exists no exception to the confidentiality requirements of the patient-therapist relationship that would have permitted its breach with respect to J.Lamberson under the circumstances presented by her treatment. At no time has anyone opined that J.Lamberson presented a danger of serious bodily injury or death to any third person which might have permitted a breach of confidentiality for the purpose of warning a third person of the danger.

she was suffering a “menopausal depression.”

Ex. “Q”, at 2.

D. Plaintiffs’ claims must be dismissed as to moving defendant, Lewis, as they are barred by the statute of limitations, having been brought more than two years after the last date of treatment, and more than two years after Plaintiffs’ knew or reasonably should have know of their claims.

Plaintiffs, Judith Lamberson and Thomas Lamberson, commenced this action with filing of a Complaint on March 9, 1999 in the United States District Court for the Eastern District of Pennsylvania, in Lamberson v. Philhaven Hospital, et al., Civil Action No. 99-cv-1217. Lewis, filed a Motion to Dismiss Plaintiffs’ Complaint because of the lack of personal jurisdiction over Lewis in the Eastern District of Pennsylvania. Plaintiffs thereafter filed an Amended Complaint in the Eastern District of Pennsylvania on July 22, 1999. Moving defendant, Lewis, thereafter filed a Motion to Dismiss Plaintiffs’ Amended Complaint because of the lack of personal jurisdiction.

By Order of the Court dated November 19, 1999, Plaintiffs’ Amended Complaint as against moving defendant, Lewis, was dismissed without prejudice for lack of personal jurisdiction.

On January 14, 2000, Plaintiffs commenced this action in the United States District Court for the District of New Jersey, with the filing of a Complaint. It was not until three (3) months later that Plaintiffs served their Complaint in this matter upon moving defendant, Lewis.

It is undisputed that J.Lamberson treated with Lewis on an outpatient basis from February 21, 1994 through June 27, 1994, and that she never saw or contacted Lewis again as a patient thereafter. (Ex. “D”, at 10; Ex. “N”, throughout; Ex. “K”, at 182) Therefore, Plaintiffs initially filed a complaint asserting claims against Lewis **almost five (5) years after J.Lamberson’s last session with him.**

The statute of limitations under New Jersey law for personal injury actions, applicable to medical malpractice claims, is two (2) years. N.J.S.A. 2A:14-2. Absent application of the discovery rule, the statute of limitations as to Plaintiffs' claims against Lewis in this matter would clearly have expired in June of 1996, almost three (3) years after the end of treatment by Lewis. Under the discovery rule, however, the statute of limitations is tolled until "a person knows or has reason to know" of the existence of a cause of action, or where the person "is actually or constructively aware 'of the state of facts which may equate in law with a cause of action.'" Mancuso v. Neckles, 163 N.J. 26, 29 (2000), quoting Burd v. New Jersey Tel. Co., 76 N.J. 284, 291, 386 A.2d 1310 (1978). In the seminal case of Fernandi v. Strully, 35 N.J. 434, 173 A.2d 277 (1961), the New Jersey Supreme Court, in adopting the discovery rule, in a case involving the leaving of a foreign body inside a patient after surgery, held that the two-year statute of limitations begins to run when the plaintiff "knows or has any reason to know" about the negligent conduct at issue. Id., 35 N.J. at 450. In Lopez v. Swyer, 62 N.J. 267, 300 A.2d 563 (1973), the New Jersey Supreme Court further explained that the discovery rule delays the running of the statute of limitations in medical malpractice cases until "the injured party discovers, or by an exercise of reasonable diligence and intelligence should have discovered that he may have a basis for an actionable claim." Id., 62 N.J. at 272. The determination of when the statute of limitations in a medical malpractice claim is deemed to have accrued is an issue for the court to decide. Fernandi, 35 N.J. at 439.

Husband-Plaintiff, Thomas Lamberson, testified that he was skeptical of his wife's diagnosis of MPD from the beginning of her treatment, in 1993. (Ex. "E", at 45, 50-51) J.Lamberson testified that she spoke with her father about her (now allegedly implanted) memories of sexual abuse prior to a family cruise in 1997, at which time she no longer believed that she had been sexually abused. (Ex. "C", at 187) J.Lamberson

testified that prior to the family's cruise in 1997, she no longer believed that she had been sexually abused, and began to believe that she did not have MPD. (Ex. "C", at 188, 190-191) The notes of her April 15, 1997 session at Preferred Behavioral Health reflect that she and her family had already gone on the cruise with her parents. (Ex. "D", at 149) J.Lamberson testified that she believed the cruise took place in either May or March, 1997. (Ex. "C", at 178) When read in conjunction with the April 15, 1997 session note, it is clear that the cruise could not have been in May, 1997, and therefore, based on J.Lamberson's testimony, was no later than March, 1997.

Accordingly, Plaintiff, Judith Lamberson knew or through the reasonable exercise of diligence discovered, that she had been subjected to (allegedly) negligent treatment by her treating professionals some time prior to her March, 1997 family cruise.

Additionally, the Plaintiffs' New Jersey federal complaint was not filed in this matter until January 14, 2000, two months after her original action, improperly filed in the Eastern District of Pennsylvania, had been dismissed for lack of personal jurisdiction. It was not until additional three months had passed that the Plaintiffs served a complaint in their new action in the District of New Jersey upon moving defendant, Lewis. Again, clearly, well more than two and possible more than three years had passed between the time Plaintiff, Judith Lamberson knew or should have known about her alleged claims against Lewis, that she filed a complaint in a court of competent jurisdiction and, eventually, had it served.

A further consideration involves the claims of the husband-plaintiff, Thomas Lamberson, who clearly testified that he always had doubts about the propriety of his wife's treatment for MPD by all of the defendants. Both the testimony of T.Lamberson and J.Lamberson clearly demonstrates that from the start, since J.Lamberson's inpatient treatment at Philhaven Hospital in February, 1993, T.Lamberson believed, and told his wife that he believed, that there was something wrong about his wife's

diagnosis of MPD and the treatment she was receiving therefore. The claims of T.Lamberson without question accrued some time in 1993, and therefore the statute of limitations with respect to the treatment by Lewis accrued no later than the last day of his treatment of J.Lamberson, June 27, 1994, and are accordingly time barred.

Further, both T.Lamberson and J.Lamberson testified almost *ad nauseum* throughout both of their depositions that throughout her psychiatric treatment, from February 1993, and even prior to this, when her psychiatric problems began to become debilitating for J.Lamberson, her husband, T.Lamberson organized and managed all of her affairs, counseled her on what to do and what not to do, made all of her day-to-day decisions. T.Lamberson also made it clear that he frequently told his wife that he did not agree with the determination that she had MPD, and that she became angry with him when he made these statements to her. Accordingly, J.Lamberson knew or *should have known* of the possibility that she was being (allegedly) harmed by the treatment she was receiving, for a diagnosis that T.Lamberson always questioned, since the early part of 1993, and her first hospitalization at Philhaven Hospital. The claims of J.Lamberson are therefore, for reasons similar to T.Lamberson, time barred.

Accordingly, the Plaintiff's complaint in this matter, and her claims as against moving defendant, Jason Lewis, are time barred, and should therefore be dismissed with prejudice.

GOLD, BUTKOVITZ & ROBINS, P.C.

BY:

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DATE: _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**THOMAS LAMBERSON AND
JUDITH LAMBERSON**

V.

**PHILHAVEN HOSPITAL, DR. NHIEN
D. NGUYEN, JANET L. DONATO,
ACSW, LSW, DR. LEO SELL, THE
DEERWOOD CENTER, JASON LEWIS
AND PREFERRED BEHAVIORAL
HEALTH OF NEW JERSEY**

CIVIL ACTION

CASE NO. 00-276 (AET)

JURY TRIAL DEMANDED

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS,
JASON LEWIS, ACSW, LSW AND THE DEERWOOD CENTER**

Moving defendants, Jason Lewis, ACSW, LSW, and Deerwood Center (referred to herein as "Lewis"), by and through their attorneys, Gold, Butkovitz & Robins, P.C., hereby moves submits the following Statement of Undisputed Facts, in support of their Motion for Summary Judgment in the above-captioned matter, and states as follows:

1. Plaintiffs, Judith Lamberson and Thomas Lamberson, commenced this action with filing of a Complaint on March 9, 1999 in the United States District Court for the Eastern District of Pennsylvania, in Lamberson v. Philhaven Hospital, et al., Civil Action No. 99-cv-1217.

2. Moving Defendant, Lewis, filed a Motion to Dismiss Plaintiffs' Complaint because of the lack of personal jurisdiction over Lewis in the Eastern District of Pennsylvania.

3. Plaintiffs filed an Amended Complaint in the Eastern District of Pennsylvania on July 22, 1999. Moving defendant, Lewis, thereafter filed a Motion to Dismiss Plaintiffs' Amended Complaint because of the lack of personal jurisdiction.

4. By Order of the Court dated November 19, 1999, Plaintiffs' Amended

Complaint as against moving defendant, Lewis, was dismissed without prejudice for lack of personal jurisdiction.

5. On January 14, 2000, Plaintiffs commenced this action in the United States District Court for the District of New Jersey, with the filing of a Complaint.

6. Plaintiffs served their Complaint in this matter upon moving defendant, Lewis, on April 13, 2000.

7. Plaintiffs, in their Complaint in this matter, have made the following specific allegations against Lewis:

38. From February 21, 1994 through June 16, 1994, wife-plaintiff had to total of 23 treatment sessions at defendant Deerwood, where she was treated by defendant, Lewis.

39. Using hypnotism and regression therapy, defendant Lewis reinforced plaintiff's belief in the memories implanted by Philhaven Hospital and reinforced her belief in her other personalities.

40. Defendant, Lewis' goal was to help plaintiff's other personalities "communicate" with each other.

41. Plaintiff stopped treating with defendants Deerwood and Lewis on September 24, 1994, because she could no longer afford to.

Ex. "A", at ¶¶38-41.

J.Lamberson's Testimony About Pre-Philhaven Recollections

8. She told Dr. Sell about the flashback at her home that started her seeking treatment. (Ex. "B", at 180)

9. She testified that her husband was hanging a picture, and was banging on the wall, and she became hysterical and ran into the living room. She believed she saw a man behind a frosted door. (Ex. "B", at 180-181)

10. She testified that her husband was hanging a picture, and the loud noise

scared her, and she had a flashback of someone standing behind frosted glass door, an exterior door of her house. (Ex. "B", at 222-223)

11. J.Lamberson testified that she can recall an incident when, as a child, she went to the bathroom during the night, went to sit down on the toilet, and instead sat in her grandfather's lap, who was seated on the toilet with his pants down, drunk and passed out. (Ex. "B", at 110-121)

12. J.Lamberson testified that she may have told a psychiatrist a different version of the story involving her grandfather. (Ex. "B", at 128)

13. She also testified that she cannot recall whether she told people at Philhaven that her grandfather had sexually abused her. (Ex. "B", at 132)

14. J.Lamberson testified that during the two years prior to her first admission at Philhaven, she had had suicidal thoughts, thoughts of taking a overdose, stabbing herself and crashing her car. (Ex. "B", at 258)

Treatment by Patricia Benzenhafer

15. She first went to see the pastor at her church for counseling for her depression and related issues. He felt that he was not qualified to counsel her, and so he referred her for treatment to his wife, Patricia Benzenhafer ("Benzenhafer"). (Ex. "B", at 142-143)

16. J.Lamberson began to see Benzenhafer professionally, and they discussed various things, including her childhood. (Ex. "B", at 143)

17. At the time she first started to see her professionally, Pat Benzenhafer was still going to school, and was not licensed. (Ex. "B", at 151; Ex. "C", at 54-55)

18. Benzenhafer referred J.Lamberson to see Dr. Leo Sell, a psychiatrist, for

the purpose of obtaining psychiatric medication. (Ex. "B", at 145)

19. J.Lamberson treated with Patricia Benzenhafer for approximately 57 sessions, from March, 1992 through January, 1994. (Ex. "D", at 145; Ex. "G", at 16)

20. Benzenhafer testified that when she first met with J.Lamberson professionally, J.Lamberson told her that she had been subjected to sexual abuse as a child. (Ex. "G", at 116-117)

21. Based on her counseling sessions with her, Benzenhafer concluded that J.Lamberson had multiple personality disorder. (Ex. "G", at 31-32)

22. J.Lamberson told Benzenhafer that at times she would discover clothing in her closet that she had no memory of purchasing:

I remember Judy disclosing to me that she had had uncomfortable feelings when she would sometimes find clothing in her closet that she didn't remember purchasing, and it would still have tags on it from the store and it would be the clothing for a woman younger than herself, but she came to realize that sometimes another alter who was a younger woman would go and purchase these things and they's why they were in her closet. (Ex. "G", at 32-33)

23. Benzenhafer testified that she personally witnessed the appearance of the younger, "shopper" personality outside of therapy, in a social setting in which she encountered J.Lamberson. (Ex. "G", at 107)

24. Benzenhafer testified that J.Lamberson felt relieved when she learned of the MPD diagnosis because she felt it explained lapses in her memory:

I think it was a relief to her to realize why these weird things happened, and some people would tell her she did something that she didn't remember and things like that. It sort of made sense out of her experiences. (Ex. "G", at 65)

25. J.Lamberson described to Benzenhafer the appearance of "a personality that was very angry and out of control," which "spoke in a harsher voice, lower registered voice." (Ex. "G", at 33) This personality, Benzenhafer testified, presented during their therapy sessions, and "her voice was a lower register, she swore and

thrashed a bit.” (Ex. “G”, at 34)

26. Benzenhafer testified that the discussions she had with J.Lamberson, and what she observed during their therapy sessions, was consistent with a diagnosis of multiple personality disorder. (Ex. “G”, at 52)

27. Benzenhafer testified that she had already made the diagnosis of multiple personality disorder, that it was “real obvious,” prior to J.Lamberson’s flashback incident that occurred when her husband was hanging a picture. (Ex. “G”, at 57)

28. She testified that she came to the diagnosis of multiple personality order based upon her own observations and evaluation of J. Lamberson in treatment, and in consultation with her therapy supervisor. (Ex. “G”, at 62)

Treatment by Dr. Sell

29. J.Lamberson testified that when she saw Dr. Sell, she told him the truth. (Ex. “B”, at 153) She testified that she told Dr. Sell that she had been sexually abused as a youth. (Ex. “B”, at 154)

30. She testified that she told Dr. Sell that she was afraid of being alone with men, and that she was always afraid. (Ex. “B”, at 179)

31. She told Dr. Sell that she was having panic attacks and bouts of depression. (Ex. “B”, at 182)

32. J.Lamberson testified that if Dr. Sell wrote something in his notes, that that was what she told him. (Ex. “B”, at 182)

Treatment at Philhaven Hospital/Janet Donato

33. J. Lamberson first admission to Philhaven was February 5 through February 26, 1993; and her second admission was May 3 through May 17, 1993. (Ex. "C", at 7-8)

34. Does not dispute the accuracy of her statements during therapy as recorded in Janet Donato's notes. (Ex. "C", at 35)

35. When J.Lamberson first met with Janet Donato at Philhaven, on February 8, 1993, she told Ms. Donato that she was there to receive and relief for help with post-traumatic stress disorder, nightmares, flashbacks of abuse, anxiety and depression. (Ex. "H", at 75)

36. She admitted that she did discover the existence of alternate personalities during therapy. (Ex. "C", at 104)

37. J.Lamberson told Donato that the reason for her admission to Philhaven was that the flashbacks of sexual abuse by her father were becoming too overwhelming to deal with any further with her therapist, Benzenhafer. (Ex. "H", at 76)

38. J.Lamberson testified that she does not have any specific recollections of what took place during group therapy sessions at Philhaven. (Ex. "C", at 37-38)

39. She also testified that she cannot recall whether she told people at Philhaven that her grandfather had sexually abused her. (Ex. "B", at 132)

40. J.Lamberson testified that all she can recall about her hypnosis with Janet Donato is what Donato said at the beginning of the sessions:

Just sit down, relax, take deep breaths, try to clear your mind and then remembering the safe room. Let's go into your safe room. The very first time she told me that it's very helpful to form a safe room so you could feel safe in, you know, telling things. You know, what's your favorite color. If you had a room that you would like, what would you put in it? I remember that the first session. And then the sessions after that it was let's go to your safe room. (Ex. "C", at 44)

41. The "hypnosis" that Janet Donato used with J.Lamberson consisted of

having Lamberson create a "safe room," close her eyes, do deep breathing, muscle relaxation, and to go to her "safe room." (Ex. "H", at 90-92)

42. Donato first met with T. Lamberson on February 10, 1993, at which time he told her that two weeks prior, J.Lamberson was "finally able to see a face on the flashback" of her abuser, "and that was her father." (Ex. "H", at 97-98)

43. Upon her readmission to Philhaven, on May 4, 1993, J.Lamberson told Donato that her reason for coming back was that "she felt certain alters were out of control," including one which tried to jump out of a moving car, and another who wanted to overdose, and a third who wanted to cut herself. (Ex. "H", at 179)

44. During a session on May 7, 1993, J.Lamberson told Donato of sexual abuse by her grandfather, and that her mother made him leave their house after discovering that he had raped her. (Ex. "H", at 183)

45. J.Lamberson testified that she told the people at Philhaven the truth. (Ex. "B", at 202)

46. J.Lamberson testified that when she was being treated by the various mental health professionals, she told them what she believed was the truth. (Ex. "B", at 202-203)

47. She testified that after her hospitalization at Philhaven, she had memories of being abused by her father. (Ex. "B", at 213)

48. J.Lamberson admitted that she had memories of abuse by her father as far back as her treatment with Benzenhafer, before she was hospitalized at Philhaven. (Ex. "B", at 213)

49. She testified that when she was first admitted to Philhaven, she told them the truth during the intake process. (Ex. "B", at 249-250) She has no recollection what she told them. (Ex. "B", at 250) She believed what she told them was the truth. (Ex. "C", at 159)

50. She testified that she never told Janet Donato that the things she was telling her were untrue. (Ex. "D", at 43-44)

Appearances of J.Lamberson's Alters to Her Husband

51. J.Lamberson testified that her husband, T.Lamberson, observed her becoming various alternate personalities on various occasions after her first admission at Philhaven. (Ex. "C", at 53)

52. T.Lamberson testified that he observed J.Lamberson "go in and out" of her alternate personalities with "no rhyme or reason." (Ex. "E", at 58-59)

53. He testified that he could recognize when his wife's alternate personalities appeared. (Ex. "E", at 59) He testified that he could tell when the personality called the "angry one" had come out. (Ex. "E", at 59)

54. He also testified that he observed when the personality called "Laurel" appeared. (Ex. "E", at 60)

55. T.Lamberson first observed an alternate personality of his wife's as they drove home from her first admission to Philhaven. (Ex. "F", at 15)

56. T.Lamberson testified that between the first and second admissions to Philhaven, he witnessed the appearance of three or four alternate personalities of his wife's. (Ex. "F", at 20-21)

57. He testified that when an alter appeared, he would ask "who is this, who am I talking to," and the alter would identify herself. (Ex. "F", at 22)

58. T.Lamberson testified that his wife's alters would appear on a constant basis, day after day, during the day, and at night, for various periods of time. (Ex. "F", at 45-46)

59. He testified that his wife's alters continued to appear up until a few

months or so before they moved to North Carolina. (Ex. "F", at 46-47)

60. T.Lamberson testified that throughout the 1993 through 1997 period, he observed his wife exhibit different personalities, different alters. (Ex. "F", at 77-78)

J.Lamberson's Sexual Abuse

61. J.Lamberson testified that when she saw Dr. Sell, she told him the truth. (Ex. "B", at 153) She testified that she told Dr. Sell that she had been sexually abused as a youth. (Ex. "B", at 154) In 1992, when she saw Dr. Sell, J.Lamberson believed that she had been sexually abused. (Ex. "C", at 137)

62. She testified that she does not remember whether she told Dr. Sell that she had been abused by her father. (Ex. "B", at 184)

63. J.Lamberson does not dispute that she told those treating her that she was sexually abused. (Ex. "B", at 207)

64. Testified that memories of sexual abuse were first "implanted" by Benzenhafer. (Ex. "B", at 218-219, 236)

65. J.Lamberson admits that she may have told the people at Philhaven that she had flashback memories of having been sexually abused by her father. (Ex. "B", at 260)

66. She admits that on the day she was admitted to Philhaven, she told the people at Philhaven that she was sexually abused by her father. At that time, she admits, no one had had the opportunity to "implant" that memory. (Ex. "B", at 299) She had the memory of her father sexually abusing her prior to her admission to Philhaven on February 5, 1993. (Ex. "B", at 299-300)

67. She testified that at the time she was admitted to Philhaven, she was

convinced that her father had sexually abused her in some way. (Ex. "B", at 272)

68. J.Lamberson testified that she now believes that her memories of sexual abuse were false because: she doesn't presently have those recollections; other people, including her father, have told her that they didn't happen; and because she believes "in my heart" that they didn't happen. (Ex. "B", at 292-299)

69. She admits that she told a doctor in North Carolina, evaluating her for social security disability, in May of 1998, that she had been sexually and emotionally abused by her father and grandfather. (Ex. "C", at 122-123) She admits that at the time she was not on any medications, nor was she under hypnosis, when she told this to the doctor. (Ex. "C", at 123-124)

J.Lamberson's Testimony About Memory Implantation

70. She testified that she has no recollection of what took place while she was under hypnosis at Philhaven. (Ex. "B", at 274) She testified that she has no recollection of anything said while she was under hypnosis. (Ex. "D", at 78)

71. She has no information that anyone at Philhaven or anywhere else suggested to her that she had had sex with her father. (Ex. "B", at 275, 277)

72. She has no information that anyone ever suggested to her that she had had sex with her grandfather. (Ex. "B", at 275)

73. J.Lamberson testified that she has no reason to believe that any of the therapists at Philhaven were lying when they told her what she had said while under hypnosis. (Ex. "B", at 276)

74. She testified that she has no evidence as to what the therapist said to her at Philhaven when she was under hypnosis. (Ex. "B", at 278)

75. She testified that her basis for believing that memories were implanted

during hypnosis is that she does not now believe that the things she was told she had said are true. (Ex. "D", at 78-82)

76. She testified that she does not dispute that fact that she actually said the things she was told by her therapists that she had said. (Ex. "D", at 82-83)

77. J.Lamberson testified that the basis for her believing that the memories of sexual abuse were false is because others have told her that it didn't happen, and because she does not presently have these memories. (Ex. "D", at 103-104)

J.Lamberson's Destruction of Her Diaries and Writings

78. J.Lamberson testified that Benzenhafer, as part of her counseling, told her to write down the things that were bothering her. (Ex. "B", at 159-160)

79. She testified that some time later, she destroyed the notes she had made during her treatment with Benzenhafer. (Ex. "B", at 160-161)

80. J.Lamberson also testified that while she was hospitalized at Philhaven, part of her treatment was to keep a journal of her thoughts during treatment. (Ex. "B", at 160-163) She testified that at Philhaven she was encouraged to do "heavy duty journaling." (Ex. "B" at 164)

81. She testified that after she was out of therapy completely, and believed that she had been harmed by her treatment, she destroyed the journals she had kept, for Benzenhafer, and during her hospitalizations at Philhaven, because she didn't want to keep anything that reminded her of the experience. (Ex. "B", at 160-164)

82. At the time she destroyed these therapy journals, J.Lamberson testified, she believed that the defendants had harmed her through their treatment. (Ex. "B". at 162)

83. She destroyed the journals from Philhaven and the notes she kept of her therapy with Benzenhafer when she stopped therapy, just before she moved to North

Carolina. (Ex. "B", at 168-169) This was in August, 1997. (Ex. "B", at 169-170)

When Plaintiffs Realized They Had Allegedly Been Harmed

84. She moved to North Carolina in August, 1997, and at least by that time she had begun to believe that she had been harmed by the treatment of the defendants, and that she had been improperly diagnosed. (Ex. "B", at 170-171)

85. The Plaintiffs went on a cruise with J.Lamberson's family, including her parents in 1997. (Ex. "C", at 177) Was in May or March, 1997. (Ex. "C", at 178)

86. J.Lamberson's April 15, 1997 treatment note at Preferred Behavioral Health notes that she and her family had already gone on a cruise with her parents. (Ex. "D", at 149)

87. At the time of the cruise, she testified, she was realizing that she had been improperly diagnosed. (Ex. "D", at 153)

88. J.Lamberson testified that before they moved to North Carolina, in November, 1997, she apologized to her father "for accusing him and thinking he did abuse me." (Ex. "C", at 183)

89. She testified that she spoke with her father before the family went on the cruise, at which time she no longer believed that she had been sexually abused. (Ex. "C", at 187)

90. By the time they went on the cruise, she no longer believed that the memories of abuse she had were correct. (Ex. "C", at 188)

91. By the time they went on the cruise, J.Lamberson testified, she was beginning to believe that she did not have multiple personality disorder. (Ex. "C", at 190-191)

92. It was in the May to July, 1997 period, T.Lamberson testified, that J.Lamberson began to believe that she had not been sexually abused, and that the

memories were not true. (Ex. "E", at 64-65)

93. J.Lamberson testified that she attributes her getting better to stopping therapy and had stopping taking psychiatric medications. (Ex. "C", at 96) This is only her opinion, and she has received no psychiatric expert opinion which supports this conclusion. (Ex. "C", at 97)

T.Lamberson's Disbelief from the Beginning

94. T.Lamberson testified that since his wife was first diagnosed with MPD, he was "skeptical." He testified that:

I was skeptical all along. I was skeptical right from the beginning. I can't accept that in just a few days, because it was really a matter of days, that my wife has MPD.

(Ex. "E", at 45)

95. T.Lamberson testified that he had trouble believing that his wife had MPD:

This multiple personality disorder. You just still, they were telling me it was true and I was believing them because they are doctors, but I was having trouble with it because it just seemed so wacky, to be honest, and I couldn't believe that it just happened in a couple of days.

(Ex. "E", at 50-51)

Treatment by Jason Lewis

96. J.Lamberson testified that she did not keep any notes or journals of her treatment with Lewis. (Ex. "B", at 168)

97. She testified that she told Jason Lewis the truth as she believed it to be at the time. (Ex. "B", at 201-202)

98. She admits that when she went to Jason Lewis for treatment, she presented with symptoms of having multiple personality disorder. (Ex. "C", at 103)

99. J.Lamberson was referred to Lewis for treatment by Shoreline. (Ex. "D", at 7; Ex. "K", at 23)
100. She treated with Lewis as an outpatient. (Ex. "D", at 8)
101. J.Lamberson's first session with Lewis was on February 21, 1994. (Ex. "D", at 10; Ex. "N", 2/21/94 notes)
102. At the time she first visited Lewis, J.Lamberson believed that she suffered from multiple personality disorder and depression. (Ex. "D", at 13)
103. J.Lamberson told Lewis during their first session that she had been diagnosed with MPD and indicated that she was comfortable with the diagnosis. She told Lewis that she was aware of the existence of her alternate personalities, including their names, sexes and behaviors. (Ex. "N", 2/21/94 notes)
104. She testified that she does not know what medications she was taking at the time, and did not know then what she was taking. (Ex. "D", at 13, 16)
105. She testified that she cannot recall exactly what they discussed during the first session, or what Lewis told her. (Ex. "D", at 19-21)
106. J.Lamberson testified that her husband, T.Lamberson, was present with her during the first session with Lewis, but not during any other sessions. (Ex. "D", at 23-24)
107. T.Lamberson testified that he was present at J.Lamberson's first session with Lewis, for 5 to 10 minutes and then left. (Ex. "E", at 49)
108. J.Lamberson testified that she does not recall if they discussed her psychiatric diagnoses during the first session. (Ex. "D", at 25)
109. J.Lamberson testified that she does not recall when Lewis started to use hypnosis in their sessions. (Ex. "D", at 30)
110. She testified that she does not recall whether Lewis ever used the term "hypnosis," and she does not ever recall him telling her that he was going to "hypnotize"

her. (Ex. "D", at 30)

111. Lewis never used hypnotherapy in his treatment of J.Lamberson. (Ex. "K", at 17)

112. J.Lamberson testified that the only recollection which she has of what she believes was hypnosis was as follows:

Well, this is what I recall, I remember him shutting the blinds and dimming the lights and the same type of thing, put me in a relaxed state, and then after that, truly I would be guessing.

(Ex. "D", at 32) She testified that once she was "relaxed," she had no further memory.

(Ex. "D", at 32) She testified that all she can recall of what Lewis would say to her at this time is that she should "relax, clear your mind." (Ex. "D", at 33)

113. J.Lamberson testified that she has no recollection whatsoever of what was said while she was in this relaxed state. (Ex. "D", at 34-35)

114. J.Lamberson testified that she does not recall whether she told Lewis that her father physically and sexually abused her, but she may have. (Ex. "D", at 40)

115. J.Lamberson testified that while she disputes the truthfulness of things she told her treating professionals, she does not dispute or doubt that she told them what the records reflect she told them. (Ex. "D", at 42-43)

116. She testified that she never told Jason Lewis that the things she told him during treatment were untrue. (Ex. "D", at 44) At the time she told him the things she told him, she believed that they were true. (Ex. "D", at 44)

117. At the time of her treatment with Lewis, or any of her other treaters, she never told them that she was being anything other than completely honest with them. At the time, she testified, she didn't have any reason to believe that what she was saying was untrue. (Ex. "D", at 44)

118. J.Lamberson testified that she has no knowledge about what, if anything, Jason Lewis knew about her prior treatment when he started treating her. (Ex. "D", at

48-49)

119. She testified that she does not know what Lewis knew about her before she first saw him. (Ex. "D", at 49)

120. She testified that she does not know what records, if any, Lewis reviewed prior to seeing her. (Ex. "D", at 49)

121. She does not know which, if any, of her previous treating professionals, Lewis had spoken to. (Ex. "D", at 49)

122. She does not know what, if any, information concerning her condition or diagnosis Lewis had prior to seeing her. (Ex. "D", at 49)

123. She testified that she does not know what information Lewis had about her condition, diagnosis or symptoms, other than what she provided to him. (Ex. "D", at 49)

124. J.Lamberson told Lewis that she had been hospitalized previously because her husband and Benzenhafer could not deal with the flashback she had been having, and because of the attempts to hurt herself by the angry male alter. (Ex. "N", 2/23/92 notes)

125. During their third session, J.Lamberson told Lewis her "life story," which was taped. (See copy of transcript of 2/28/94 session, attached as Ex. "M"; Ex. "N", 2/28/94 notes; Ex. "L")

126. J.Lamberson told Lewis that her father was an alcoholic, a batterer, and possibly a sexual abuser. She told him that her mother was battered, and that she had been sexually assaulted by the father. J.Lamberson told Lewis that she had had several "nervous breakdowns" and that her grandfather sexually abused her. She told Lewis that she openly displayed MPD/DID as a teenager, and that her MPD/DID behavior had been observed by her coworkers. (Ex. "N", 2/28/94 notes)

127. J.Lamberson told Lewis that her grandfather had abused her. (Ex. "M",

lines 84-85) Her mother often told her that she had a split personality. (Ex. "M", lines 109-110) She told Lewis that her father beat her very badly when she was young, and that he would kick her sister, and hit her on the head. (Ex. "M", lines 145-148, 154-156)

128. She told Lewis that when she was in school she sometimes exhibited signs of dissociation, of acting like she wasn't herself, and told him:

But in school ... school's like a ... a protection to me away from them. But yet I would still go into my ... my, uh ... whatever. Obviously, the teachers didn't call home and tell my mother we don't know who Judy is, we don't know what she's doing, if she's in a trance or she's talking different, or ... you know, maybe you should take her to a doctor.

(Ex. "M", lines 163-169)

129. J.Lamberson told Lewis that during high school she briefly saw a psychiatrist because she started "doing crazy things at home" and exhibiting an alternate personality:

I went to the psychiatrist three times ... Because I started doing crazy things at home. I believe that's when the angry (one?) started to take over ... would throw chairs at my father, would stand up to him and would do things that were totally out of character for me.

(Ex. "M", lines 195-201)

130. Lewis never ordered J.Lamberson's prior medical records because he did not want to be influenced by their treatment history in the making of his own independent diagnosis. (Ex. "K", at 140)

131. J.Lamberson testified that it is possible that Lewis made his own independent diagnosis of her condition. (Ex. "D", at 49-50)

132. Lewis made his own independent assessment of J.Lamberson's diagnosis, and testified that the factors in coming to the diagnosis included: (1) her experiences as a child in an alcoholic family, with various forms of physical, emotional and possible sexual abuse, as related to him by J.Lamberson; (2) J.Lamberson's reports of other problems, such as psychosomatic gastrointestinal problems starting at

a very young age, becoming hypervigilant and having certain behavioral problems, consistent with someone attempting to deal with her environment and beginning to separate; and (3) having other psychological manifestations, bulimia, dependent personality disorder, and J.Lamberson's presentation to Lewis of various alternate personalities. (Ex. "K", at 136-138)

133. She testified that she has no independent recollection of anything that she told Lewis during their sessions after she became "relaxed," and that she only knows what Lewis told her afterward. (Ex. "D", at 53)

134. She testified that she has no recollection whatsoever of speaking as an alternate personality, or of anything said by an alternate personality. (Ex. "D", at 53)

135. She testified that she does recall being told by Lewis afterward what was said during the session by the alternate personalities. She testified that she has no reason to disbelieve that the conversations related to her by Lewis did not take place. (Ex. "D", at 53)

136. She has no recollection of Lewis, himself, telling her that things would get worse before they got better. (Ex. "D", at 54, 99)

137. J.Lamberson testified that she has no knowledge or evidence that Lewis did not believe that his treatment of her was appropriate. (Ex. "D", at 59)

138. She testified that she has no information whatsoever that Lewis did not honestly believe that she had multiple personality disorder. (Ex. "D", at 59)

139. She testified that she has no recollection of Jason Lewis ever telling her to stay away from her parents. (Ex. "D", at 63)

140. J.Lamberson testified that she has no reason to believe that Jason Lewis ever told her what to think or what her memories were. (Ex. "D", at 83)

141. She testified that she does not know in how many of her sessions with Lewis she was in a "trance." (Ex. "D", at 98)

142. She testified that she does not know whether she was always in a trance during her sessions with Lewis, or whether they simply talked without he being in a trance. (Ex. "D", at 98)

143. J.Lamberson testified that she believes it is possible that Jason Lewis did not tell her about the things she said during their sessions that she cannot remember, that she believes would have been said while in a trance. (Ex. "D", at 98-99)

144. She testified that she has no knowledge or information that Lewis did anything to implant any memories, or to suggest any memories, to her. (Ex. "D", at 100-101)

145. Lewis treated J.Lamberson using cognitive behavioral therapy, which "examines thinking, feeling and behavior from a developmental perspective." (Ex. "K", at 41)

146. Lewis testified that T.Lamberson did not like his wife's diagnosis of MPD, and that it appeared that he could not handle J.Lamberson's alter switching. (Ex. "K", at 107-108)

147. T.Lamberson told Lewis that he had witnessed his wife's alter switching on several occasions, and that they would appear by name. (Ex. "K", at 135)

148. When Lewis first met with J.Lamberson, she told him that she had been diagnosed with MPD, that she had alters, told him what their names were, and what they did to her. (Ex. "K", at 113)

149. During their first meeting, J.Lamberson tells Lewis that she is an incest survivor, and that she had been abused by her grandfather, and maybe her father or uncle. (Ex. "K", at 115)

150. During her therapy with Lewis, J.Lamberson switches to numerous alternate personalities spontaneously during her sessions, including on 3/7/94, 3/10/94, 3/24/94, 3/31/94, 4/18/94, 5/2/94, 5/12/94, 5/19/94, 5/23/94, 5/26/94, 6/16/94 and

6/27/94. (Ex. "K", at 131-132, 151, 168-169, 171-172, 177-179; Ex. "N", 3/7/94 notes, 3/10/94 notes, 3/24/94 notes, 3/31/94 notes, 4/18/94 notes, 5/2/94 notes, 5/12/94 notes, 5/19/94 notes, 5/23/94 notes, 5/26/94 notes, 6/16/94 notes and 6/27/94 notes)

151. June 27, 1994 was J.Lamberson's last session with Lewis, after which she never contacted him again, and never responded to any of Lewis' attempts to contact her. (Ex. "K", at 182)

Treatment at Preferred Behavioral Health

152. J.Lamberson testified that she told Sally Palmer the truth. (Ex. "B", at 201)

153. She testified that when she went to Preferred, she presented to them as having symptoms of multiple personality disorder. She testified that she does not dispute Preferred's treatment notes which show that she presented with symptoms of multiple personality disorder. (Ex. "C", at 103)

154. When she came to Preferred for treatment, she believed that she had multiple personality disorder, and that she had alternate personalities. (Ex. "C", at 161)

155. She told Sally Palmer at Preferred that she was diagnosed with multiple personality disorder. (Ex. "C", at 142)

156. She told Preferred about the existence of her alternate personalities. (Ex. "C", at 143)

Plaintiff's Damages

157. J.Lamberson testified that her psychiatric damages were already done by the time of her treatment by Philhaven. (Ex. "C", at 108, 111)

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